

CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
JULY 21, 2015

Paul S. Leon
Mayor

Debra Dorst-Porada
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
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

Dorst-Porada, Wapner, Bowman, 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: *One (1) case.*
- 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: Dorst-Porada, Wapner, Bowman, Avila, Mayor/Chairman Leon

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Reverend Jesus Briones, St. George Catholic 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 June 16, 2015, and the special meeting of the City Council and Housing Authority of June 17, 2015, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills May 31, 2015 through June 13, 2015 and **Payroll** May 31, 2015 through June 13, 2015, when audited by the Finance Committee.

3. DESIGNATION OF VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES ANNUAL BUSINESS MEETING

That the City Council designate Alan D. Wapner as the City's voting delegate and Debra Dorst-Porada as an alternate for the League of California Cities Annual Business Meeting scheduled for October 2, 2015.

4. A PROFESSIONAL SERVICES AGREEMENT FOR SPECIALIZED TAX CONSULTING SERVICES FOR MATTERS BEFORE THE STATE BOARD OF EQUALIZATION; AND A PROFESSIONAL SERVICES AGREEMENT FOR SALES TAX CONSULTING SERVICES RELATED TO AN OPERATING COVENANT AGREEMENT/ROBERT E. CENDEJAS AND ASSOCIATES, INC./BUSINESS LOCATION ADVISORS, INC./STRATEGIC BUSINESS LOCATIONS, INC.

That the City Council take the following actions:

- (A) Approve and authorize the City Manager to execute a five year professional services agreement (on file with the Records Management Department) with Robert E. Cendejas and Associates, Inc. of Diamond Bar, California, for specialized tax consulting services for matters related to and before the State Board of Equalization and authorize the option to extend the agreement for an additional five years; and
- (B) Approve and authorize the City Manager to execute a forty-one year professional services agreement (on file with the Records Management Department) by and between the City of Ontario and Robert E. Cendejas and Associates, Inc.; Business Location Advisors, Inc.; and Strategic Business Locations, Inc., all of Diamond Bar, California, for consulting services in conjunction with the forty-one year Operating Covenant Agreement, approved by the City Council on June 16, 2015, between the City of Ontario and QVC, Inc. ("QVC").

5. A RESOLUTION AUTHORIZING AN ACQUISITION AND FUNDING AGREEMENT AND A MEMORANDUM OF AGREEMENT WITH NMC BUILDERS LLC

That the City Council adopt a resolution to:

- (A) Authorize the execution of an Acquisition and Funding Agreement between the City of Ontario and NMC Builders LLC to provide for the future acquisition of completed public facilities constructed by and/or funded directly by NMC Builders LLC members, both as individual members and jointly, with the proceeds of community facilities district (CFD) special tax bonds from recently formed and future CFDs; and
- (B) Authorize the execution of a Memorandum of Agreement between the City of Ontario and NMC Builders LLC regarding the application of the City's Local Goals and Policies for community facilities districts and to provide a priority of uses for the proceeds of bonds issued pursuant to recently formed and future CFDs.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF
AN ACQUISITION AND FUNDING AGREEMENT AND A
MEMORANDUM OF AGREEMENT.

6. AN ORDINANCE TO AMEND SECTIONS 2-9.02 AND 2-9.03 OF THE ONTARIO MUNICIPAL CODE RELATING TO CHANGING THE NAME OF THE PUBLIC MUSEUM TO "ONTARIO MUSEUM OF HISTORY AND ART"

That the City Council consider and adopt an ordinance amending Chapter 9 of Title 2 of the Ontario Municipal Code to change the name of the City's public museum to "Ontario Museum of History and Art."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 9 OF TITLE 2 OF THE ONTARIO MUNICIPAL CODE TO APPROVE CHANGING THE NAME OF THE PUBLIC MUSEUM TO "ONTARIO MUSEUM OF HISTORY AND ART."

7. AGREEMENT TO PROVIDE CONTRACT LAW ENFORCEMENT SERVICES FOR AN EVENT IN THE CITY OF POMONA

That the City Council authorize the City Manager to execute a one-time agreement to provide contract law enforcement services to the City of Pomona in support of a Live Nation festival concert event to be held Saturday, August 1 and Sunday, August 2, 2015.

8. STUDENT REPRESENTATIVE AND ALTERNATE APPOINTMENTS TO THE RECREATION AND PARKS COMMISSION FOR 2015/16 AND RECOGNITION OF THE CURRENT STUDENT REPRESENTATIVE FOR THE YEAR SERVED 2014/15

That the City Council confirm Keven Michel, Ontario High School, as the Student Representative and Crystal Saldivar, Ontario High School, as the Alternate to the Recreation and Parks Commission for the term to expire June 30, 2016; and recognize Keven Michel, Ontario High School, for serving as the Student Representative and Ricardo Olea, Ontario High School, for serving as the Student Representative Alternate for the past year.

9. CONSTRUCTION CONTRACT AND PROFESSIONAL SERVICES AGREEMENT FOR THE CONSTRUCTION, MANAGEMENT, AND INSPECTION OF WATER MAIN IMPROVEMENTS AT VARIOUS LOCATIONS/T.E. ROBERTS, INC./ALBERT A. WEBB ASSOCIATES

That the City Council:

- (A) Approve the plans and specifications, and award Contract No. UT 1415-08 (on file with the Records Management Department) to T. E. Roberts, Inc. of Tustin, California for the construction of water main improvements at various locations in the amount of \$3,298,459 plus a 15% contingency of \$494,769, for a total amount of \$3,793,228 and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project; and
- (B) Authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with Albert A. Webb Associates of Riverside, California, to provide construction management and inspection services of water main improvements at various locations in the amount of \$219,600 plus a 15% contingency of \$32,940, for a total amount of \$252,540.

10. CONSTRUCTION CONTRACT FOR THE MUNICIPAL SERVICES CENTER PAVEMENT REHABILITATION (PHASE 1A) AND LANDSCAPE & IRRIGATION IMPROVEMENTS/SULLY MILLER CONTRACTING CO.

That the City Council approve the plans and specifications, and award Contract No. UT 1314-04 (on file in the Records Management Department) to Sully Miller Contracting Co. of Brea, California, for the Pavement Rehabilitation (Phase 1A) and Landscape & Irrigation Improvements at the Ontario Municipal Service Center in the amount of \$1,812,078 plus a 15% contingency of \$271,812, for a total of \$2,083,890; and authorize the City Manager to execute said contract and file the Notice of Completion at the conclusion of all construction activities related to the project.

11. PROFESSIONAL SERVICES AGREEMENT WITH MICHAEL BAKER INTERNATIONAL FOR ENGINEERING DESIGN SERVICES FOR RECYCLED WATER MAIN IMPROVEMENTS ALONG EUCLID AVENUE AND RIVERSIDE DRIVE

That the City Council authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with Michael Baker International of Ontario, California in the amount of \$1,486,828 plus a 10% contingency of \$148,683, for a total amount of \$1,635,511, to provide engineering services for the design of recycled water main improvements along both Euclid Avenue and Riverside Drive.

12. A RESOLUTION APPROVING AN APPLICATION FOR THE USED OIL PAYMENT PROGRAM CYCLE 6 (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

That the City Council adopt a resolution approving a grant application for an estimated \$46,000 from the Used Oil Payment Program Cycle 6 (Fiscal Year 2015-16) through the State of California Department of Resources Recycling and Recovery (CalRecycle); and authorize the City Manager or his designee to execute all necessary documents to participate in the program.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF AN ANNUAL APPLICATION TO PARTICIPATE IN THE USED OIL PAYMENT PROGRAM CYCLE 6 (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY.

13. ON-CALL SERVICES FOR WATER DISTRIBUTION AND SEWAGE COLLECTIONS SYSTEM REPAIRS/T.E. ROBERTS, INC.

That the City Council award Contract No. UT 1516-04 (on file in the Records Management Department) to T.E. Roberts, Inc. of Tustin, California, for on-call services for water distribution and sewage collections system repairs in the amount of \$1,200,000 for FY 2015-16 with the option to extend the agreement for up to four additional one-year periods consistent with City Council approved budgets; and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

14. PURCHASE OF WATER METERS AND REPAIR PARTS/HD SUPPLY WATERWORKS

That the City Council approve and authorize the sole source purchase of new water meters and repair parts for a total not to exceed amount of \$2,400,000 from HD Supply Waterworks of Perris, California.

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.

15. A PUBLIC HEARING TO CONSIDER THE SALE OF CITY-OWNED PROPERTY; IN ACCORDANCE WITH GOVERNMENT CODE SECTION 37420 ET. SEQ., MAKING CERTAIN FINDINGS; AND ADOPTION OF A RESOLUTION APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND MGH ONTARIO, LLC, FOR THE REDEVELOPMENT OF THE FORMER SUNKIST GROWERS INC. FRUIT PACKING FACILITY

That the City Council conduct a public hearing to consider the sale of City-owned property; and adopt a resolution approving a Disposition and Development Agreement ("Agreement") between the City of Ontario ("City") and MGH Ontario, LLC. ("Developer") (on file with the Records Management Department); and authorize the City Manager to execute the Agreement and all other documents required for implementation of the Agreement, including the filing of the Certificate of Completion upon completion of the project.

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE OF ONTARIO, CALIFORNIA, APPROVING THE SALE OF PROPERTY PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MHG-ONTARIO, LLC FOR PROPERTY GENERALLY LOCATED AT 616 EAST SUNKIST STREET (APN 1049-221-01).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN ADDENDUM TO THE ONTARIO PLAN ENVIRONMENTAL IMPACT REPORT FOR THE SALE OF PROPERTY PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MHG-ONTARIO, LLC FOR PROPERTY GENERALLY LOCATED AT 616 EAST SUNKIST STREET FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1049-221-01.

16. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO UPDATE CERTAIN INFRASTRUCTURE PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF UP TO 1,146 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL ON 178.66 ACRES OF LAND WITHIN PLANNING AREAS 9A, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE (ONTARIO RANCH ROAD), BETWEEN TURNER AVENUE AND HAVEN AVENUE

That the City Council introduce and waive further reading of an ordinance approving an amendment (File No. PDA15-002) to the Development Agreement between the City of Ontario and BrookCal Ontario, LLC, (File No. PDA15-002, on file in the Records Management Department), to update certain infrastructure provisions of the existing development agreement for the development of up to 178.66 acres of land within planning areas 9A, 10A, 10B and 11 of the Avenue Specific Plan, located south of Schaefer Avenue, North of Edison Avenue (Ontario Ranch Road), between Turner Avenue and Haven Avenue.

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-002) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO UPDATE CERTAIN INFRASTRUCTURE PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT (FILE NO. PDA10-002) FOR THE DEVELOPMENT OF UP TO 1,146 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL ON 178.66 ACRES OF LAND WITHIN PLANNING AREAS 9A, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE (ONTARIO RANCH ROAD), BETWEEN TURNER AVENUE AND HAVEN AVENUE AND MAKING FINDINGS IN SUPPORT THEREOF. (APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 AND 0218-201-45).

STAFF MATTERS

City Manager Boling

COUNCIL MATTERS

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

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
July 21, 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: *One (1) case.*

No Reportable Action

Continue

Approved

/ /

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Disposition: _____

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

/ /

/ /

/ /

Disposition: _____

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

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: DESIGNATION OF VOTING DELEGATES FOR THE LEAGUE OF CALIFORNIA CITIES ANNUAL BUSINESS MEETING

RECOMMENDATION: That the City Council designate Alan D. Wapner as the City's voting delegate and Debra Dorst-Porada as an alternate for the League of California Cities Annual Business Meeting scheduled for October 2, 2015.

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 direct fiscal impact by taking this action; however, representation and participation in the League of California Cities (League) upcoming business meeting will help establish League policy on matters which may affect the City's finances.

BACKGROUND: The League has scheduled their Annual Business Meeting for October 2, 2015 during the Annual League Conference in San Jose, California. At the Annual Business Meeting, the League membership considers and takes action on resolutions that establish League policy.

Consistent with League bylaws, a city's voting delegate and alternate must be designate by the City Council.

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Vicki Kasad
Department: Records Management/City Clerk

City Manager
Approval:



Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR SPECIALIZED TAX CONSULTING SERVICES FOR MATTERS BEFORE THE STATE BOARD OF EQUALIZATION; AND A PROFESSIONAL SERVICES AGREEMENT FOR SALES TAX CONSULTING SERVICES RELATED TO AN OPERATING COVENANT AGREEMENT

RECOMMENDATION: That the City Council take the following actions:

- (A) Approve and authorize the City Manager to execute a five year professional services agreement (on file with the Records Management Department) with Robert E. Cendejas and Associates, Inc. of Diamond Bar, California, for specialized tax consulting services for matters related to and before the State Board of Equalization and authorize the option to extend the agreement for an additional five years; and
- (B) Approve and authorize the City Manager to execute a forty-one year professional services agreement (on file with the Records Management Department) by and between the City of Ontario and Robert E. Cendejas and Associates, Inc.; Business Location Advisors, Inc.; and Strategic Business Locations, Inc., all of Diamond Bar, California, for consulting services in conjunction with the forty-one year Operating Covenant Agreement, approved by the City Council on June 16, 2015, between the City of Ontario and QVC, Inc. ("QVC").

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

FISCAL IMPACT: The City utilizes specialized tax consultants on an as-needed basis for advisory services and representing the City before the State Board of Equalization on sales tax matters. The recommended professional services agreement with Robert E. Cendejas and Associates, Inc. calls for an hourly billing rate of \$370 during the first year of the agreement and a maximum change of up to 5% for each subsequent year, subject to negotiation. The anticipated costs for consulting services for Fiscal

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. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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Year 2015-16 is estimated to be \$100,000. Appropriations for this professional services agreement are included in the current Operating Budget approved by the City Council and will be included in future Operating Budgets for approval by the City Council.

The forty-one year professional services agreement includes a fee component calculated as 5% of the first \$5 million of annual local sales and use tax received should QVC allocate such taxes to Ontario. This fee covers reimbursement for tax consulting services provided while assisting the City in negotiations and drafting of the QVC Operating Covenant Agreement for their new facility leased in the City of Ontario for a forty-one year term. This fee also includes future consulting services for all administrative proceedings that include State Board of Equalization meetings, conferences and appeals before Board of Equalization and its Board Members. If approved, necessary appropriations adjustments will be included in future quarterly budget update reports to the City Council.

BACKGROUND: The State Board of Equalization (“BOE”) plans to review a number of sales and use tax matters and proposed regulations which would potentially impact the allocation of local sales and use tax revenues to the City of Ontario. Additionally, the BOE continually considers and adopts updated regulations regarding the allocation of sales and use tax from internet sales transactions and sales orders received from out-of-state locations. These updated regulations may result in significant impacts to the amount of sales and use tax revenues that the City receives.

Sales tax (approximately \$71 million annually) is the single highest General Fund revenue source for the City. It is recommended that the City retain a sales tax legal consultant to assist the City in resolving sales tax matters and proposed regulations before the BOE. The City has worked with Robert E. Cendejas and Associates, Inc. in the past on an as-needed basis to assist the City in addressing routine sales tax matters before the BOE. Staff recommends that the City continue to retain the services of Robert E. Cendejas and Associates, Inc. based on their qualifications in sales and use tax transactions in California; extensive experience with proposed regulations and hearings before the State Board of Equalization; nearly forty years of experience in State tax matters in California; being a licensed certified public accountant with prior employment experience as a tax auditor with the State Board of Equalization; and knowledge and experience of the City’s current policies and procedures.

On June 16, 2015, the City Council approved a forty-one year Operating Covenant Agreement with QVC to locate and lease a new distribution center and warehouse within the City of Ontario. 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.

To help negotiate and draft the terms and conditions of the Operating Covenant Agreement with QVC, the City worked with Robert E. Cendejas and Associates, Inc.; Business Location Advisors, Inc.; and Strategic Business Locations, Inc. As payment for the work performed and in recognition of future efforts to ensure continued compliance with the Operating Covenant Agreement, a 5% fee has been negotiated to be applied to the first \$5,000,000 of local sales and use tax received by the City each year for the length of the QVC Operating Covenant Agreement. The fee will be split equally between the three consulting companies. This professional services agreement will run for the length of the QVC Operating Covenant Agreement and be tied to that Agreement with the fee to be a portion of the local sales and use tax received by the City for the forty-one year term; and therefore it will not affect future Operating Budgets to be approved by the City Council. Should the BOE, during the term of this agreement, request repayment of any subject local sales and use tax, the City will receive a repayment of

the proportionate fees paid to the consulting companies. The three consulting companies are also to provide, at no additional cost to the City, representation and specialized tax consulting services pertaining to the QVC Operating Covenant Agreement at administrative proceedings that include all BOE meetings, conferences and appeals before the BOE Board Members.

CITY OF ONTARIO

Agenda Report
July 21, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION AUTHORIZING AN ACQUISITION AND FUNDING AGREEMENT AND A MEMORANDUM OF AGREEMENT WITH NMC BUILDERS LLC

RECOMMENDATION: That the City Council adopt a resolution to:

- (A) Authorize the execution of an Acquisition and Funding Agreement between the City of Ontario and NMC Builders LLC to provide for the future acquisition of completed public facilities constructed by and/or funded directly by NMC Builders LLC members, both as individual members and jointly, with the proceeds of community facilities district (CFD) special tax bonds from recently formed and future CFDs; and
- (B) Authorize the execution of a Memorandum of Agreement between the City of Ontario and NMC Builders LLC regarding the application of the City's Local Goals and Policies for community facilities districts and to provide a priority of uses for the proceeds of bonds issued pursuant to recently formed and future CFDs.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

Invest in Growth and Evolution of the City's Economy

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 proposed Acquisition and Funding Agreement and Memorandum of Agreement (on file with the Records Management Department) provide the terms, priorities and projects for the use of special tax bond proceeds that are to be repaid from special taxes to be levied on residential development projects in the eastern portion of Ontario Ranch (New Model Colony). The total cost for the facilities to be acquired under the Acquisition and Funding Agreement is estimated to be approximately \$451 million. The projects that have been included in the Acquisition and Funding Agreement consist of two categories of facilities: (1) Backbone Facilities, including City parks, that have been funded and/or constructed directly by the NMC Builders LLC (approximately \$157 million);

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. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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and (2) Backbone Facilities, including City parks, that have been, or will be constructed by individual member-developers of NMC Builders, and their assigns (approximately \$294 million). Since CFD bond financing (Mello-Roos bonds) does not represent a direct financial obligation of the City, and is paid from special taxes levied on each taxable parcel within a given CFD, there is no General Fund impact from the use of CFD bond financing to acquire these public facilities.

BACKGROUND: To date, NMC Builders LLC has provided funding to the City for the design and construction of a significant number of public facilities including: two water reservoirs, major water transmission facilities, water production wells and a new fire station. Additionally, the NMC Builders LLC is directly funding and constructing additional water and recycled water transmission facilities; a major regional storm drainage treatment facility; storm drain collection facilities; and major street construction on Archibald and Edison Avenues in Ontario Ranch (New Model Colony). These facilities were constructed, or are being constructed, under the provisions of the original Construction Agreement between the City and NMC Builders LLC, and the First Amended and Restated Construction Agreement between the parties.

The Mello-Roos Community Facilities Act of 1982 provides local government, with the approval of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public facilities. In the First Amended and Restated Construction Agreement between the City and the NMC Builders LLC, the City agreed to cooperate with the members of NMC Builders in the formation of CFDs to assist in the financing of the public improvements included in the agreement.

Acquisition and Funding Agreement with NMC Builders LLC

The City and the NMC Builders LLC have entered into a series of agreements to provide funding for, and to construct, public infrastructure facilities. The NMC Builders LLC began providing funding for the design and construction of major water supply and storage facilities in 2005 and has continued to fund the design and construction of public facilities required for the development of the eastern portion of Ontario Ranch (New Model Colony). Funding for these public facilities has been made possible by the contributions of individual NMC Builders members to NMC Builders LLC. The provisions of the various agreements between the City and the NMC Builders LLC have included the City's intention to cooperate with NMC Builders members in the formation of CFDs in order to acquire the completed facilities constructed and/or financed by the NMC Builders LLC with special tax bond proceeds when such bond proceeds become available. As proposed, the Acquisition and Funding Agreement between the City and NMC Builders LLC provides the mechanism for the purchase with special tax bond proceeds of completed public facilities constructed and/or funded by the NMC Builders LLC and public facilities to be constructed and/or funded by NMC Builders LLC members in the future. The purchase of completed public facilities included in the Acquisition and Funding Agreement with NMC Builders LLC constitutes a second priority of facilities to be purchased if special tax bond funding capacity remains after the acquisition of completed public facilities that are included in a separate local Acquisition Agreement.

Memorandum of Agreement with NMC Builders LLC

The City previously adopted Local Goals and Policies for the use of Mello-Roos (CFD) financing. The Local Goals and Policies provide guidelines and requirements for the formation of CFDs and also

provide various limitations for the levying of special taxes. City staff and its consultants have met over a series of months with representatives of NMC Builders LLC regarding application of the Local Goals and Policies to the facilities being constructed by NMC Builders LLC, directly, as well as by individual NMC Builders LLC members. The proposed Memorandum of Agreement between the parties is a result of this collaboration. The Memorandum of Agreement provides additional clarifications regarding the application of the Local Goals and Policies, as well as specific priorities for the use of special tax bond proceeds. The provisions of the Memorandum of Agreement with the NMC Builders LLC include:

- The establishment of 175 units as the minimum project size for consideration of eligibility for formation of a CFD.
- An agreement-specific definition for “backbone infrastructure,” to include the public facilities described in the City’s Development Impact Fee (DIF) Program - and while not part of the City’s DIF Program - the pavement, curb and gutter, sidewalks and street lighting improvements (known as “last lane” improvements) and the landscaped parkways and neighborhood edge public facilities (known as “neighborhood edge” improvements).
- The order of priority for the public facilities to be acquired with CFD special tax bond proceeds:
 - 1) First Priority. Components and/or segments of completed DIF Program Facilities and “last lane” and “neighborhood edge” improvements constructed by an individual NMC Builders Member and included in a Local Acquisition Agreement;
 - 2) Second Priority. If net proceeds remain after satisfying the requirement to purchase the First Priority improvements, such net proceeds shall be applied to pay for components and/or segments of completed DIF Program Facilities and “last lane” and “neighborhood edge” improvements that have been directly constructed and/or directly funded by NMC Builders LLC;
 - 3) Third Priority. If net proceeds remain after satisfying the requirements to purchase the First Priority and the Second Priority improvements, such net proceeds shall be applied to pay for in-lieu fees paid for Park Development. This Third Priority is specifically contingent upon the sale by certain NMC Builders LLC members to the City of two parklands parcels located in the Great Park area; and

If net proceeds remain after the acquisition of the First, Second and Third Priority facilities, and if the individual NMC Builders LLC member has fully satisfied all of its applicable Conditions of Approval for the project, then additional public facilities eligible for CFD financing may be included as a Fourth Priority, and then, a Fifth Priority, as detailed in the Agreement.

- Potential waivers (to be determined on a case by case basis) of the Local Goals and Policies maximum percentages for taxes plus HOA fees of 2.15% for detached residential units and 2.55% for attached units. The Local Goals and Policies provide for a maximum tax levy, including CFD Special Taxes, of 1.95%. Additionally, the Policies also set maximum rates for taxes plus HOA fees of 2.15% for detached residential units and 2.55% for attached units. The Memorandum of Agreement provides that the City will consider a waiver of the maximum total tax and HOA fee

percentages when enhanced levels of HOA amenities and expanded maintenance responsibilities are included in an HOA fee amount. In no case will the total tax levy exceed 1.95%.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION AND FUNDING AGREEMENT AND A MEMORANDUM OF AGREEMENT.

WHEREAS, certain real property within the boundaries of the City located generally south of State Route 60 is commonly known as the New Model Colony; and

WHEREAS, on January 27, 2010, the City approved a General Plan Amendment for the New Model Colony (the "General Plan Amendment") and certified an Environmental Impact Report (SCH #2008101140) in connection with the General Plan Amendment (the "EIR"); and

WHEREAS, the City has specified in the General Plan Amendment and the EIR the major backbone transportation, water, sewer, storm drainage, parks and public safety infrastructure required to serve the New Model Colony; and

WHEREAS, on December 4, 2012, the City approved the Water Master Plan; the Recycled Water Master Plan; the Sewer Master Plan; and, the Master Plan of Drainage and adopted a Mitigated Negative Declaration to address any potential environmental impacts associates with the Master Plans to further define the location and size of certain infrastructure improvements; and

WHEREAS, on December 4, 2012, the City adopted the Master Plan of Streets and Highways and adopted an Addendum to The Ontario Plan EIR to address any potential environmental impacts associates with the Master Plans to further define the location and size of certain street improvements; and

WHEREAS, the members (the "Members") of NMC Builders, LLC, a limited liability company organized and existing under the laws of the State of California ("NMC Builders"), own and intend to develop certain of the property within the New Model Colony; and

WHEREAS, the City, NMC Builders and the Members desire to provide a mechanism to fund, in a timely manner, the costs of certain of such major backbone infrastructure required to serve the New Model Colony (the "Facilities") so that such development may occur; and

WHEREAS, in order to provide such a mechanism, the City anticipates that it will, subject to the provisions of the City of Ontario Mello-Roos Community Facilities Act of 1982 Local Goals and Policies, establish one or more community facilities districts (each, a "Community Facilities District") pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, it is anticipated that the property included within the boundaries of each Community Facilities District will include only property that is within the New Model Colony and that is subject to a development agreement between the City and a Member; and

WHEREAS, it is anticipated that, pursuant to the Act, the proceedings of the City Council of the City and an election held within each Community Facilities District, each Community Facilities District will be authorized to issue special tax bonds (the "Bonds") secured by special taxes ("Special Taxes") levied within such Community Facilities District to finance certain of the Facilities; and

WHEREAS, it is anticipated that Special Taxes will be levied by each Community Facilities District and that, from time to time, Bonds will be issued by each Community Facilities District; and

WHEREAS, NMC Builders proposes to construct, or cause to be constructed, in accordance with the First Amended and Restated Agreement for Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, made as of August 21, 2012, by and between the City and NMC Builders, certain of the Facilities proposed to be financed by each of the Community Facilities Districts pursuant to the Act, and the City proposes to purchase such Facilities from NMC Builders pursuant to an Acquisition and Funding Agreement by and between the City and NMC Builders (such Acquisition and Funding Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Acquisition Agreement"); and

WHEREAS, the City and NMC Builders desire to set forth their mutual understanding and agreement as to how certain of the policies in the City's Mello-Roos Community Facilities Act of 1982 Local Goals and Policies are to be applied to the Community Facilities Districts, the order of priority in which proceeds of the Special Taxes and Bonds will be applied to the costs of the Facilities and certain other matters pursuant to a Memorandum of Agreement by and between the City and NMC Builders (such Memorandum of Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Memorandum of Agreement"); and

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The Acquisition Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City and the Administrative Services/Finance Director of the City, and such other officer or employee of the City as the City Manager may designate (the "Authorized Officers") is hereby

authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the City, to execute and deliver the Acquisition Agreement in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Acquisition Agreement by such Authorized Officer.

SECTION 3. The Memorandum of Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the City, to execute and deliver the Memorandum of Agreement in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Memorandum of Agreement by such Authorized Officer.

SECTION 4. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED this 21st day of July 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 July 21, 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 July 21, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: AN ORDINANCE TO AMEND SECTIONS 2-9.02 AND 2-9.03 OF THE ONTARIO MUNICIPAL CODE RELATING TO CHANGING THE NAME OF THE PUBLIC MUSEUM TO “ONTARIO MUSEUM OF HISTORY AND ART”

RECOMMENDATION: That the City Council consider and adopt an ordinance amending Chapter 9 of Title 2 of the Ontario Municipal Code to change the name of the City’s public museum to “Ontario Museum of History and Art.”

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City
Programs, Policies and Activities

FISCAL IMPACT: If approved, over the course of the upcoming year, staff will update all marketing materials and signage to correspond with the new branding/name of the Museum. Associated costs related to marketing and signage materials will be covered within the City Council approved operating budget for the Museum for this fiscal year. Large signage and monument signage, once designed, will be included in future budget requests to the City Council, as needed.

BACKGROUND: On July 7, 2015 the City Council introduced and waived further reading of an ordinance amending Chapter 9 of Title 2 of the Ontario Municipal Code to change the name of the City’s public museum to “Ontario Museum of History and Art.” The Museum of History and Art, Ontario Board of Trustees held several workshops to discuss arts and culture initiatives in the City of Ontario, and obtained input from outside stakeholders. A major focus in the workshops was the stated desire to rebrand the Museum of History and Art, Ontario to coincide with citywide branding and destination marketing efforts.

The recommended name change to “Ontario Museum of History and Art” emphasizes the location of the Museum as being in the City of Ontario and thereby calls attention to the arts and cultural offerings in the City. At a special meeting on June 15, 2015, the Museum Board of Trustees unanimously

STAFF MEMBER PRESENTING: Mark Chase, Community & Public Services Director

Prepared by: John Worden
Department: Museum

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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recommended that the City Council amend Sections 2-9.02 and 2-9.03 of the Ontario Municipal Code to reflect the recommended new name of the City's public museum.

If approved by the City Council, the Museum will update all signage and marketing materials to reflect the name change. The Museum Board of Trustees has also created a new logo for the Museum and a separate logo to incorporate arts and culture programs within the City. A copy of each is presented for reference.

Ontario Museum of History & Art



ONTARIO
MUSEUM
OF HISTORY & ART

Ontario Arts & Culture Logo





MUSEUM OF HISTORY AND ART, ONTARIO
BOARD OF TRUSTEES
STAFF REPORT
June 15, 2015

SUBJECT: CHANGE THE NAME OF THE PUBLIC MUSEUM TO "ONTARIO MUSEUM OF HISTORY AND ART"

RECOMMENDATION: That the Museum of History and Art, Ontario Board of Trustees recommend that the City Council approve the changing of the name of the public museum to "Ontario Museum of History and Art."

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

BACKGROUND: The Museum of History and Art, Ontario Board of Trustees has held workshops to discuss arts and culture initiatives in the City of Ontario with Downtown arts and culture stakeholders. A major focus in the workshops was the stated desire to rebrand the Museum of History and Art, Ontario to coincide with citywide branding and destination marketing.

The recommended name change to "Ontario Museum of History and Art" emphasizes the location of the museum as being in the City of Ontario and thereby calls attention to the arts and cultural offerings in the City. Upon approval by the Board of Trustees, the City Council will need to amend Chapter 9 of Title 2 of the Ontario Municipal Code to reflect the changing of the name of the public museum.

Prepared by: John Worden

Submitted to Board of Trustees: 6/12/15

Museum
Director

Approval:

A handwritten signature in black ink, appearing to read "John Worden", written over a horizontal line.

Approved:

Continued to:

Denied:

by BOARD 6/16/15

RESOLUTION NO. MBT 2015-01

A RESOLUTION OF THE MUSEUM OF HISTORY AND ART, ONTARIO BOARD OF TRUSTEES OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL AMEND CHAPTER 9 OF TITLE 2 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE PUBLIC MUSEUM.

WHEREAS, the Museum of History and Art, Ontario Board of Trustees ("Board of Trustees") has held workshops to discuss arts and culture initiatives in the City of Ontario ("City") with Downtown arts and culture stakeholders; and

WHEREAS, the Board of Trustees desires to rebrand the Museum of History and Art, Ontario to coincide with citywide branding and destination marketing; and

WHEREAS, the Board of Trustees recommends to the City Council to amend Chapter 9 of Title 2 of the Ontario Municipal Code relating to the Public Museum to change the name of the public museum to "Ontario Museum of History and Art."

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED, by the Museum of History and Art, Ontario Board of Trustees of the City of Ontario as follows:

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

SECTION 2. Chapter 9 of Title 2 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Chapter 9: Public Museum

2-9.01 Established.
2-9.02 Site.
2-9.03 Name.

Sec. 2-9.01 Established.

A public museum of natural and historical objects in the City is hereby established pursuant to the provisions of Article 6 of Chapter 4 of Division 3 of Title 4 of the Government Code of the State (commencing with Cal. Gov't Code § 37541), the provisions of which are hereby incorporated in and made a part of this chapter.

Sec. 2-9.02 Site.

The historic City Hall building, located at 224 South Euclid Avenue, in its entirety, is hereby established as the site of the public museum.

Sec. 2-9.03. Name.

The public museum shall be given the name of "Ontario Museum of History and Art."

SECTION 3. 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 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

The President for the Museum Board of Trustees of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Museum Board of Trustees of the City of Ontario at a special meeting thereof held on the 15th day of June 2015, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Rick Caughman, President

ATTEST:



John Worden, Museum Director

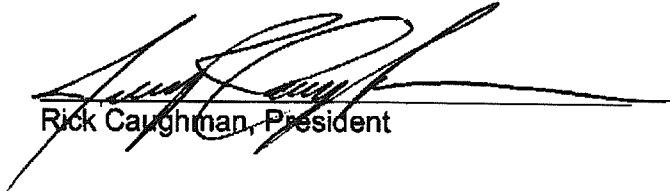
STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Rick Caughman, President of the Museum Board of Trustees of the City of Ontario,
DO HEREBY CERTIFY that foregoing Resolution No. 2015- *01* was duly passed and
adopted by the Museum Board of Trustees of the City of Ontario at their special meeting
held June 15, 2015 by the following roll call vote, to wit:

AYES: BOARD MEMBERS: Caughman, Kueng, del Turo, & Ortega

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS: Dubas


Rick Caughman, President

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 9 OF TITLE 2 OF THE ONTARIO MUNICIPAL CODE TO APPROVE CHANGING THE NAME OF THE PUBLIC MUSEUM TO "ONTARIO MUSEUM OF HISTORY AND ART."

WHEREAS, the Museum of History and Art, Ontario Board of Trustees ("Board of Trustees") has held workshops to discuss arts and culture initiatives in the City of Ontario ("City") with Downtown arts and culture stakeholders; and

WHEREAS, the Board of Trustees desires to rebrand the Museum of History and Art, Ontario to coincide with citywide branding and destination marketing; and

WHEREAS, at a Special Meeting on June 15, 2015, the Museum Board of Trustees unanimously recommended that the City Council amend Chapter 9 of Title 2 of the Ontario Municipal Code to reflect changing the name of the public museum; and

WHEREAS, on July 7, 2015, the City Council held a public hearing regarding the amendment to Chapter 9 of Title 2 of the Ontario Municipal Code to reflect the name change of the public museum.

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

SECTION 1. Findings. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Ordinance.

SECTION 2. Chapter 9 of Title 2 of the Ontario Municipal Code is hereby amended, to read as follows:

Chapter 9: Public Museum

2-9.02 Site.

2-9.03 Name.

Sec. 2-9.02 Site.

The historic City Hall building, located at 225 South Euclid Avenue, in its entirety, is hereby established as the site of the public museum.

Sec. 2-9.03. Name.

The public museum shall be given the name of "Ontario Museum of History and Art."

SECTION 3. Severability. If any provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity, and the provisions of this Ordinance are severable.

SECTION 4. Effective Date. This updated amendment to the Ordinance shall become effective thirty (30) days following its adoption.

SECTION 5. 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 21st day of July 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. 3023 was duly introduced at a regular meeting of the City Council of the City of Ontario held July 7, 2015 and adopted at the regular meeting held July 21, 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. 3023 duly passed and adopted by the Ontario City Council at their regular meeting held July 21, 2015 and that Summaries of the Ordinance were published on July 14, 2015 and July 28, 2015 in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: AGREEMENT TO PROVIDE CONTRACT LAW ENFORCEMENT SERVICES FOR AN EVENT IN THE CITY OF POMONA

RECOMMENDATION: That the City Council authorize the City Manager to execute a one-time agreement to provide contract law enforcement services to the City of Pomona in support of a Live Nation festival concert event to be held Saturday, August 1 and Sunday, August 2, 2015.

COUNCIL GOALS: Regain Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Pursue the City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: The City of Pomona will reimburse the City of Ontario for all contract costs associated with services provided in support of the Live Nation concert event. Based on the number and type of personnel requested to support the event, including administrative and overhead costs, the total estimated cost is \$170,000. If approved, the revenue and associated expenditure adjustments will be included in the Fiscal Year 2015-16 First Quarter Budget Report.

BACKGROUND: The City of Pomona, California has requested the City of Ontario to assist with contract law enforcement services in support of the Live Nation festival concert event being held at the Los Angeles County Fairgrounds in Pomona on Saturday, August 1 and Sunday, August 2, 2015. The Live Nation concert has an estimated attendance of over 100,000 people over the two-day event, requiring a law enforcement presence that exceeds the capability of the Pomona Police Department. The Ontario Police Department has a working relationship with the Pomona Police Department and has provided similar contract assistance for a smaller concert event in 2014. Based on the success of the previous event, the Pomona Police Department has requested the Ontario Police Department to provide contract law enforcement services in support of this upcoming event.

Under the proposed agreement, the Ontario Police Department will provide sixty (60) personnel per-day, including managers, supervisors, and field personnel, as well as associated vehicle and support

STAFF MEMBER PRESENTING: Brad Kaylor, Chief of Police

Prepared by: Darryl Polk
Department: Police

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

equipment, to ensure adequate span of control and effective coordination with the Pomona Police Department. All costs for Ontario's staff and equipment will be reimbursed by the City of Pomona.

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: STUDENT REPRESENTATIVE AND ALTERNATE APPOINTMENTS TO THE RECREATION AND PARKS COMMISSION FOR 2015/16 AND RECOGNITION OF THE CURRENT STUDENT REPRESENTATIVE FOR THE YEAR SERVED 2014/15

RECOMMENDATION: That the City Council confirm Keven Michel, Ontario High School, as the Student Representative and Crystal Saldivar, Ontario High School, as the Alternate to the Recreation and Parks Commission for the term to expire June 30, 2016; and recognize Keven Michel, Ontario High School, for serving as the Student Representative and Ricardo Olea, Ontario High School, for serving as the Student Representative Alternate for the past year.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities.

FISCAL IMPACT: None

BACKGROUND: The Student Representative Program was approved by the City Council on January 15, 2002. The Student Representative is a non-voting member of the Recreation and Parks Commission. Since its inception, twenty-three (23) students have participated in the program.

A recruitment process was conducted to include all local high schools and City teen programs. Candidate finalists were invited to the Recreation & Parks Commission meeting on June 22, 2015 for the final selection process before being presented to the City Council. These appointments represent the recommendation of the Recreation and Parks Commission.

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

Prepared by: Julie Dorey
Department: Recreation/Community Services

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: CONSTRUCTION CONTRACT AND PROFESSIONAL SERVICES AGREEMENT FOR THE CONSTRUCTION, MANAGEMENT, AND INSPECTION OF WATER MAIN IMPROVEMENTS AT VARIOUS LOCATIONS

RECOMMENDATION: That the City Council:

- (A) Approve the plans and specifications, and award Contract No. UT 1415-08 (on file with the Records Management Department) to T. E. Roberts, Inc. of Tustin, California for the construction of water main improvements at various locations in the amount of \$3,298,459 plus a 15% contingency of \$494,769, for a total amount of \$3,793,228 and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project; and
- (B) Authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with Albert A. Webb Associates of Riverside, California, to provide construction management and inspection services of water main improvements at various locations in the amount of \$219,600 plus a 15% contingency of \$32,940, for a total amount of \$252,540.

**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 2015-16 Capital Improvement Program includes appropriations from the Water Capital Fund for this project. The recommended contract award to T. E. Roberts, Inc. is for \$3,298,459 plus 15% contingency of \$494,769, for a total amount of \$3,793,228. The recommended contract award to Albert A. Webb Associates is for \$219,600 plus 15% contingency of \$32,940, for a total amount of \$252,540. There is no impact to the General Fund.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Fernando Cobos
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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BACKGROUND: The City's potable water system includes approximately 564 miles of pipeline. The City's Water Master Plan has identified the need to replace undersized and aging pipelines to maintain the reliability of water service to the community and to improve service pressure and fire flow availability. Improvements are prioritized based on capacity deficiencies, deterioration, and the current level of maintenance activities required to provide adequate and reliable water service. The proposed project consists of the installation of approximately 12,000 linear feet of 12-inch and 8-inch water pipeline and appurtenances to replace existing 4-inch, 6-inch, and 8-inch diameter pipelines and 580 existing water services. A location map is provided for reference.

On February 20, 2014, proposals were solicited for the preparation of plans and specifications for the design of the water main replacement at various locations. Albert A. Webb Associates was awarded the contract based upon their qualifications and successful completion of similar projects. Award of the construction management and inspection services was deferred to coincide with the construction phase of the project. Approval of the professional services agreement will maintain continuity of the project and complete the award of this phase of the contract.

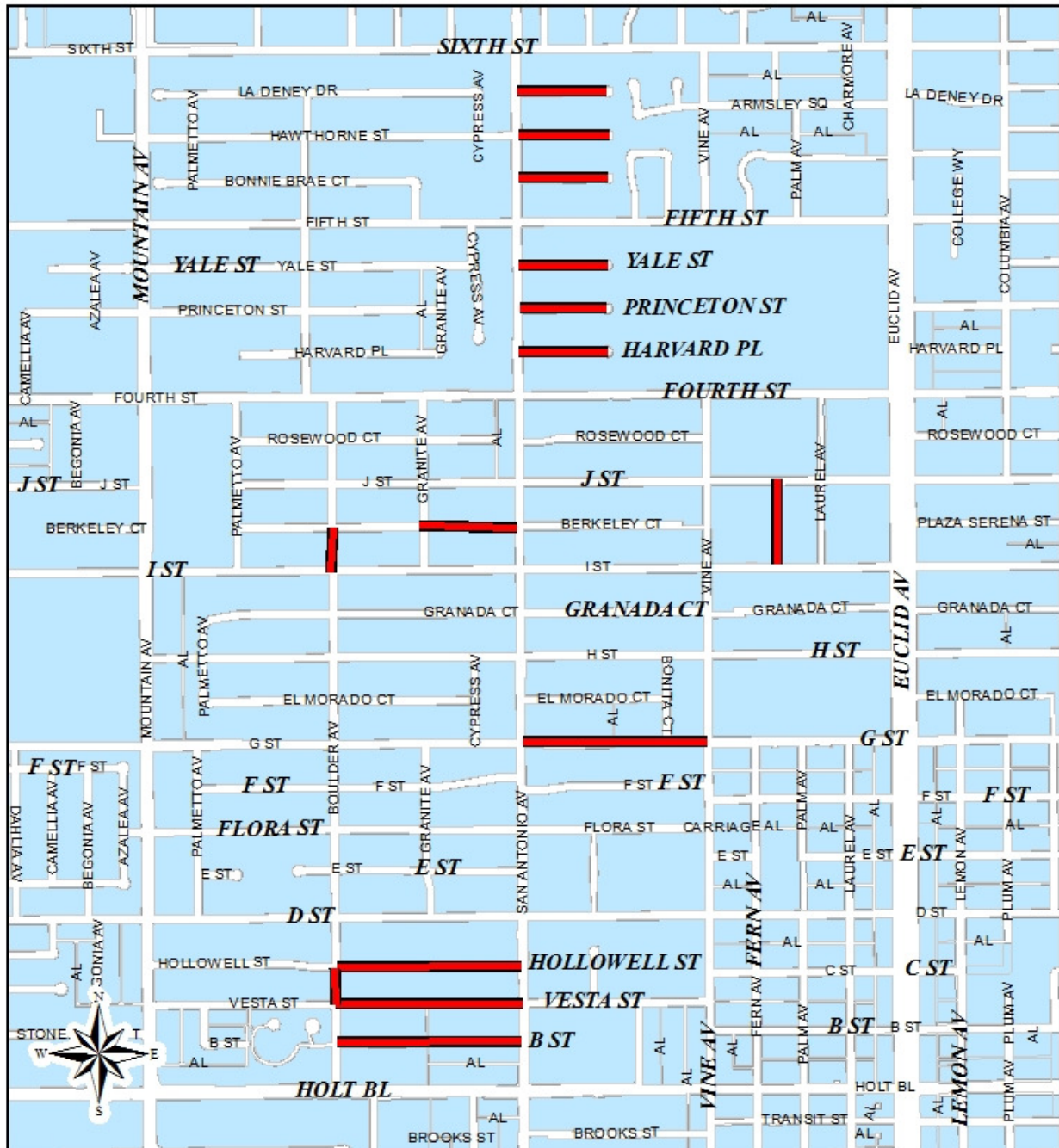
On May 28, 2015, twenty (20) bids were received for construction of FY 2014-2015 Water Main Improvements (Phase 1). The bids ranged from \$3,298,459 to \$4,900,100. The lowest five bids are summarized below.

<u>Bidder</u>	<u>Location</u>	<u>Amount</u>
T. E. Roberts, Inc.	Tustin, CA	\$3,298,459
Universal Pipeline, Inc.	Menifee, CA	\$3,496,765
Norstar Plumbing & Engineering, Inc.	Alta Loma, CA	\$3,513,165
TBU, Inc.	Menifee, CA	\$3,563,991
Mike Bubalo Construction Co., Inc.	Baldwin Park	\$3,565,650

Staff recommends the award to T. E. Roberts, Inc. of Tustin, California, based on their expertise and ability to perform the work in a timely manner and successful completion of this type of work in the past.

ENVIRONMENTAL REVIEW: The project is a component of the 2012 Infrastructure Master Plans approved by the City Council on December 4, 2012. A Mitigated Negative Declaration was prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. The Mitigated Negative Declaration addressed the drainage, sewer, water and recycled water master plans (2012 Infrastructure Master Plans) including their alignments, pipe sizes and installation for the City. An analysis of the project has determined that there is no deviation from the description of this component of the overall 2012 Infrastructure Master Plans. Thus, no further CEQA analysis is required.

CONTRACT NO. UT1415-08
WATER MAIN IMPROVEMENT (PHASE 1)
FY 2014-2015



CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: CONSTRUCTION CONTRACT FOR THE MUNICIPAL SERVICES CENTER PAVEMENT REHABILITATION (PHASE 1A) AND LANDSCAPE & IRRIGATION IMPROVEMENTS

RECOMMENDATION: That the City Council approve the plans and specifications, and award Contract No. UT 1314-04 (on file in the Records Management Department) to Sully Miller Contracting Co. of Brea, California, for the Pavement Rehabilitation (Phase 1A) and Landscape & Irrigation Improvements at the Ontario Municipal Service Center in the amount of \$1,812,078 plus a 15% contingency of \$271,812, for a total of \$2,083,890; and authorize the City Manager to execute said contract and file the Notice of Completion at the conclusion of all construction activities related to the project.

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 2015-16 Capital Improvement Program includes appropriations for this project. The recommended contract award to Sully Miller Contracting Co. is for \$1,812,078 plus a 15% contingency of \$271,812, for a total of \$2,083,890.

BACKGROUND: The existing pavement at the Ontario Municipal Services Center is severely deteriorated with historical drainage problems being a contributing factor. On November 6, 2012, the City Council awarded a construction contract for storm water mitigation improvements consisting of vegetated bioswales and clarifiers to address storm water runoff and treatment of pollutants pursuant to the Water Quality Management Plan for the facility. At the time, construction of the landscaping and irrigation system for the bioswales was deferred to the following phase of construction. This next phase includes additional drainage improvements, the deferred landscaping and irrigation for the bioswales, and conduits for the City's future fiber optic system, new asphalt pavement in the visitor and employee parking areas, the public CNG fueling station, and portions of the operational area within the facility. The remaining portions of the asphalt pavement will be rehabilitated in future phases.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Dennis Mejia
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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On June 4, 2015, four bids for construction of Pavement Rehabilitation (Phase 1A) and Landscape & Irrigation Improvements at the Ontario Municipal Service Center were received as summarized below.

<u>Vendor</u>	<u>Location</u>	<u>Amount</u>
Sully Miller Contracting Co.	Brea, California	\$1,812,078
All American Asphalt	Corona, California	\$1,852,661
Griffith Company	Montclair, California	\$1,897,019
Cutting Edge Concrete Services, Inc.	Oro Grande, California	\$2,071,399

Staff recommends the award to Sully Miller Contracting Co. of Brea, California, based on their expertise, ability to perform the work in a timely manner and successful completion this type of work in the past.

ENVIRONMENTAL REVIEW: The project has been reviewed pursuant to the California Environmental Quality Act (CEQA) and has been determined to be exempt from CEQA pursuant to Section 15268 which states that ministerial projects are exempt from the requirements of CEQA. In addition, Section 15061(b)(3) states that 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.

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH MICHAEL BAKER INTERNATIONAL FOR ENGINEERING DESIGN SERVICES FOR RECYCLED WATER MAIN IMPROVEMENTS ALONG EUCLID AVENUE AND RIVERSIDE DRIVE

RECOMMENDATION: That the City Council authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with Michael Baker International of Ontario, California in the amount of \$1,486,828 plus a 10% contingency of \$148,683, for a total amount of \$1,635,511, to provide engineering services for the design of recycled water main improvements along both Euclid Avenue and Riverside Drive.

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 2015-16 Capital Improvement Program includes appropriations from the Water Capital Fund for this project. The recommended contract award to Michael Baker International is for \$1,486,828 plus 10% contingency of \$148,683, for a total amount of \$1,635,511. There is no impact to the General Fund.

BACKGROUND: In response to statewide severe drought conditions, on April 1, 2015, Governor Jerry Brown signed an Executive Order requiring all water suppliers in California to reduce potable water use by 25%, beginning June 1, 2015 and continuing through February 28, 2016. The resulting State emergency regulations require all water suppliers to restrict the use of potable, or drinking water for outdoor irrigation of ornamental landscapes or turf.

The City's 2010 Urban Water Management Plan (UWMP) identifies the use of recycled water as a critical element of the City's supply to meet its future demand for water. Expanding the use of recycled water provides a long-term sustainable water source that is not subject to the same limitations under the current drought conditions as potable water supplies. Recycled water can be used for irrigation and industrial applications as approved by the State Water Resources Control Board and will result in

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Dennis Mejia
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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significant reductions in the City's long-term reliance on more expensive and increasingly less reliable imported water supplies.

The City's 2010 Recycled Water Master Plan identifies a potential recycled water usage of up to 1,200 acre-feet per year (AFY) along Euclid Avenue and various connecting streets. Similarly, a potential usage of up to 1,400 AFY along Riverside Drive and vicinity has been identified. The areas, parks and schools targeted for connection include Ontario City Hall, the Euclid median, James Bryant Park, Bon View Park, De Anza Park, Homer Briggs Park, South Bon View Park, Cypress Park, Kimball Park, Creekside Park, Ontario High School, Ontario Christian School, Ontario Christian High School, Bon View Elementary School, Sultana Elementary School, De Anza Middle School, Linda Vista Elementary School, Euclid Elementary School, Richard Haynes Elementary School, Vista Grande Elementary School, Grace Yokley Middle School, Colony High School, Creek View Elementary School, Woodcrest Junior High School, and Liberty Elementary School.

Both areas will require the design and construction of approximately 18 miles of new 8-inch to 16-inch diameter pipelines. A location map is provided for reference, and it is anticipated that each area be constructed in phases to allow for the greatest flexibility in awarding and completing constructed contracts in a timely manner.

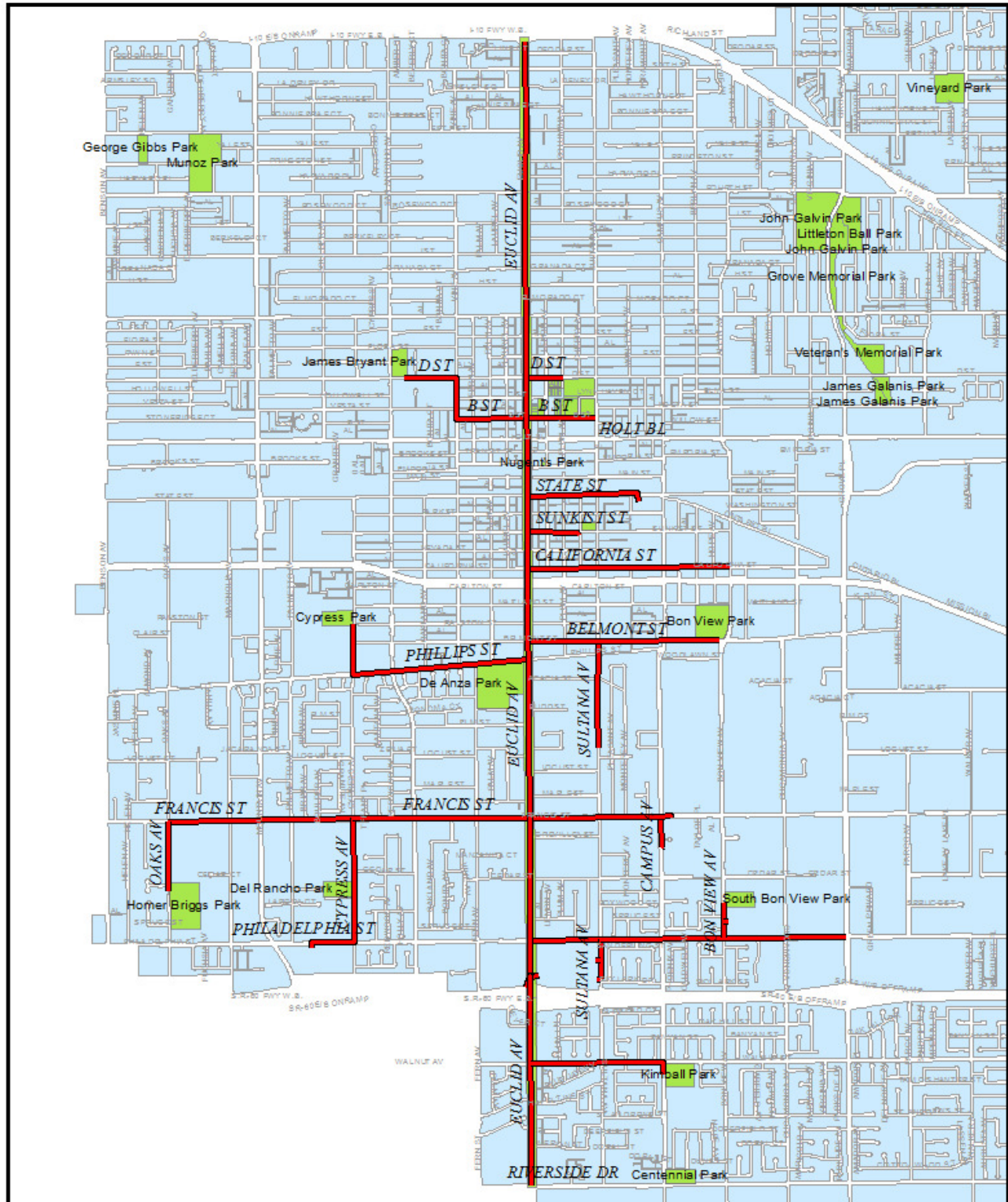
Proposals for engineering design services were solicited from professional engineering firms with expertise in recycled water pipeline design. The scope of services includes the preparation of plans and specifications for the recycled water main design, Title 22 Supplemental Engineering Report, CEQA documentation, and outside agency permitting. Proposals were received from the following firms:

<u>Name</u>	<u>Location</u>
Michael Baker International	Ontario, CA
Cannon	Upland, CA
Tetra Tech, Inc.	San Dimas, CA
TKE Engineering, Inc.	Riverside, CA

Michael Baker International is recommended based on their proposal, expertise and ability to perform the work in a timely manner, and successful completion of this type of work in the past.

The authorization to provide professional design services for recycled water main improvements is not a project under CEQA. An environmental review pursuant to CEQA is included in the scope of services. Upon completion of the recycled water main design and in conjunction with the award of any construction contracts, any required CEQA compliance measures will be brought to the City Council for consideration.

RECYCLED WATER MAIN IMPROVEMENT



RECYCLED WATER MAIN IMPROVEMENT



**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2014-0038**

**TO ADOPT AN EMERGENCY REGULATION
FOR STATEWIDE URBAN WATER CONSERVATION**

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an [executive order](#) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The executive order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015. The [National Integrated Drought Information System](#) reported that nearly 80% of the state was reported to be under "extreme" drought conditions at the end of June;
2. The executive order refers to the [Governor's Proclamation No. 1-17-2014](#), issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State's dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California's rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on;
4. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";
5. Over 400,000 acres of farmland are expected to be fallowed, thousands of people may be out of work, communities risk running out of drinking water, and fish and wildlife will suffer.

6. Many Californians have taken bold steps over the years and in this year to reduce water use; nevertheless, the dire nature of the current drought requires additional conservation actions from residents and businesses. Some severely affected communities have implemented water rationing, limiting water use in some cases to only 50 gallons per person per day, foregoing showers, laundry, toilet flushing, and all outdoor watering.
7. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required ;
8. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water;
9. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).
10. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
11. The emergency regulations set a minimum standard requiring only modest lifestyle changes across the state. Many communities are already doing more and have been for years. They should be commended, but can and should do more. Others are not yet doing so and should at least do this, but should do much more given the severity of the drought;
12. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;
13. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation;
14. As discussed above, the State Water Board is adopting the emergency regulation because of emergency drought conditions, the need for prompt action, and current limitations in the existing enforcement process;

15. Disadvantaged communities may require assistance in increasing water conservation and state agencies should look for opportunities to provide assistance in promoting water conservation;
16. Nothing in the regulations or in the enforcement provisions of the regulations, preclude a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulations adopted by this resolution and local agencies retain their enforcement discretion in enforcing the regulations, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 863, 864, and 865, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes;
4. These regulations shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulations due to continued drought conditions as described in Water Code section 1058.5;
5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulations and their effect;
6. Directs State Water Board staff to condition funding upon compliance with the emergency regulations, to the extent feasible;
7. Directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations; and
8. Directs State Water Board staff in developing an electronic reporting portal to include data fields so that local agencies may provide monthly reporting data on (i) conservation-related implementation measures or enforcement actions taken by the local agency and (ii) substitution during the drought of potable water with recycled water to extend water supplies.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. The State Water Board commends water suppliers that have increased conservation messaging and adopted innovative strategies to enhance customer awareness of water use, such as applications that let customers compare their water use to water use by others; reduce system losses, such as fixing system leaks which can deplete supplies by 10 percent or more; and establish incentives to reduce demand, such as tiered or drought rate structures. The State Water Board also commends all Californians that have already been working to maximize their conservation efforts, both at home and at work;
10. The State Water Board calls upon water suppliers to take the following actions:

Educate customers and employees

- Retail water suppliers should provide notice of the regulations in English and Spanish in one or more of the following ways: newspaper advertisements, bill inserts, website homepage, social media, notices in public libraries;
- Wholesale suppliers should include reference to the regulations in their customer communications;
- All water suppliers should train personnel on the regulations;
- All water suppliers should provide signage where recycled or reclaimed water is being used for activities that the emergency regulations prohibit with the use of potable water, such as operation of fountains and other water features;
- All water suppliers should redouble their efforts to disseminate information regarding opportunities and incentives to upgrade indoor fixtures and appliances;
- All water suppliers should use education and the tools available through the Save Our Water website (<http://saveourwater.com>); and
- All water suppliers should educate and prepare their boards and councils on the drought response actions contained in the emergency regulations and in this resolution, and to make sure that drought response items are placed on agendas as early as possible;

Increasing local supplies

- All water suppliers should accelerate the completion of projects that will conserve potable water by making use of non-potable supplies, such as recycled water, "greywater," and stormwater collection projects;
- All water suppliers should improve their leak reporting and response programs and request that police and fire departments and other local government personnel report leaks and water waste that they encounter during their routine duties/patrols;
- Smaller water suppliers – those with fewer than 3,000 service connections – should take proactive steps to secure their communities' water supplies and educate their customers about water conservation and the status of their supply reserves;
- All water suppliers should conduct water loss audits and make leak detection and repair a top priority for the duration of the drought; and
- All urban water suppliers should evaluate their rate structures and begin to implement needed changes as part of planning for another dry year. Information and assistance on setting and implementing drought rates is available from the Alliance for Water Efficiency. (<http://www.allianceforwaterefficiency.org/>).

11. The State Water Board calls on all Californians to take the following additional actions:
 - Further reduce water demand, whether by using less water in daily routines indoors and out, retrofitting appliances and installing greywater and rainwater catchment systems; and
 - Check residential and business water bills to see if there are high charges that may indicate a leak and to fix the leak, if they are able, or contact their local water utility if they need assistance.
12. The State Water Board encourages its staff, the Department of Water Resources, the Public Utilities Commission, urban water suppliers, and other local agencies to look for opportunities to encourage and promote new technologies that reduce water usage, including through timely access to water usage information and behavioral response.
13. The State Water Board encourages all state and local agencies to look for additional opportunities to minimize potable water use in outdoor spaces.
14. The State Water Board encourages investor-owned utilities to expeditiously submit applications for implementation of the regulations to the California Public Utilities Commission.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 15, 2014.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Steven Moore
Board Member Dorene D'Adamo

NAY: None

ABSENT: Board Member Tam M. Doduc

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

PROPOSED TEXT OF EMERGENCY REGULATIONS

Article 22.5. Drought Emergency Water Conservation

Sec. 863 Findings of Drought Emergency

(a) The State Water Resources Control Board finds as follows:

(1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;

(2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;

(3) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist;

(4) The present year is critically dry and has been immediately preceded by two or more consecutive below normal, dry, or critically dry years; and

(5) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to further promote conservation.

Authority: Wat. Code, § 1058.5.

References: Wat. Code, §§ 102, 104, 105.

Sec. 864 Prohibited Activities in Promotion of Water Conservation

(a) To promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of potable water to driveways and sidewalks; and

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system.

(b) The taking of any action prohibited in subdivision (a) of this section, in addition to any other applicable civil or criminal penalties, is an infraction, punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs.

Authority: Wat. Code, § 1058.5.

References: Wat. Code, §§ 102, 104, 105.

PROPOSED TEXT OF EMERGENCY REGULATIONS

Sec. 865 Mandatory Actions by Water Suppliers

(a) The term “urban water supplier,” when used in this section, refers to a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b)(1) To promote water conservation, each urban water supplier shall implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water.

(2) As an alternative to subdivision (b)(1), an urban water supplier may submit a request to the Executive Director for approval of an alternate plan that includes allocation-based rate structures that satisfies the requirements of chapter 3.4 (commencing with section 370) of division 1 of the Water Code, and the Executive Director may approve such an alternate plan upon determining that the rate structure, in conjunction with other measures, achieves a level of conservation that would be superior to that achieved by implementing limitations on outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week.

(c) To promote water conservation, each urban water supplier that does not have a water shortage contingency plan or has been notified by the Department of Water Resources that its water shortage contingency plan does not meet the requirements of Water Code section 10632 shall, within thirty (30) days, limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week or shall implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the persons it serves relative to the amount consumed in 2013.

(d) In furtherance of the promotion of water conservation each urban water supplier shall prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. Beginning October 15, 2014, the monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves. In its initial monitoring report, each urban water supplier shall state the number of persons it serves.

(e) To promote water conservation, each distributor of a public water supply, as defined in Water Code section 350, that is not an urban water supplier shall, within thirty (30) days, take one or more of the following actions:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(2) Implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the persons it serves relative to the amount consumed in 2013.

Authority: Wat. Code, § 1058.5.

References: Wat. Code, §§ 102, 104, 105; 350; 10617; 10632.

CITY OF ONTARIO

Agenda Report

July 21, 2015

SECTION: CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN APPLICATION FOR THE USED OIL PAYMENT PROGRAM CYCLE 6 (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

RECOMMENDATION: That the City Council adopt a resolution approving a grant application for an estimated \$46,000 from the Used Oil Payment Program Cycle 6 (Fiscal Year 2015-16) through the State of California Department of Resources Recycling and Recovery (CalRecycle); and authorize the City Manager or his designee to execute all necessary documents to participate in the program.

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

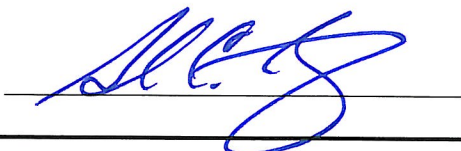
FISCAL IMPACT: The City is eligible to receive approximately \$46,000 in per capita funding through the Used Oil Payment Program to fund qualifying expenses made between July 1, 2015 and June 30, 2017. There are no additional costs and no matching funds required for the City to participate in this grant program. There is no impact to the General Fund.

BACKGROUND: The California Oil Recycling Enhancement Act provides annual payments to local governments for the implementation of used oil and filter collection programs. The costs covered by this program include publicity, educational materials and collection facility operations that support used oil and filter recycling, including some of the costs associated with operation of the City's Household Hazardous Waste Collection Facility located at 1430 South Cucamonga Avenue. The program is intended to assist the City in achieving the goals set by the State of California to reduce the amount of waste sent to the landfills by 50%. Used oil recycling and hazardous waste collection are integral programs for attaining this goal.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Bonnie Butler
Department: MU/Solid Waste

City Manager
Approval: _____



Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE SUBMITTAL OF AN ANNUAL APPLICATION TO PARTICIPATE IN THE USED OIL PAYMENT PROGRAM CYCLE 6 (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY.

WHEREAS, pursuant to Public Resources Code §48690 the Department of Resources Recycling and Recovery (CalRecycle) has established the Used Oil Payment Program to make payments to qualifying jurisdiction for implementation of their used oil programs; and

WHEREAS, in furtherance of this authority, CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Programs; and

WHEREAS, CalRecycle's procedures for administering the Used Oil Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario authorizes the submittal of a Used Oil Payment Program application to CalRecycle.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all documents, including but not limited to applications, agreements annual reports including expenditure reports and amendments necessary to secure said payments to support the Used Oil Payment Program.

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

PASSED, APPROVED, AND ADOPTED this 21st day of July 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 July 21, 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 July 21, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
July 21, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: ON-CALL SERVICES FOR WATER DISTRIBUTION AND SEWAGE COLLECTIONS SYSTEM REPAIRS

RECOMMENDATION: That the City Council award Contract No. UT 1516-04 (on file in the Records Management Department) to T.E. Roberts, Inc. of Tustin, California, for on-call services for water distribution and sewage collections system repairs in the amount of \$1,200,000 for FY 2015-16 with the option to extend the agreement for up to four additional one-year periods consistent with City Council approved budgets; and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

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 2015-16 budget includes \$1,200,000 (\$800,000 from the Water Operating Fund and \$400,000 from the Sewer Operating Fund) for these services. The agreement includes an option to extend the agreement for up to four successive one-year periods consistent with City Council approved work programs and budgets. Actual expenditures will be based on work completed at established contract rates. Prices for the first year are fixed through the end of June 2016. Price changes after the first year will be negotiated annually and will not exceed 3%. There is no impact to the General Fund.

BACKGROUND: The City's water distribution and sewer collections systems have approximately 950 miles of pipeline that are currently maintained by City resources. At times, the amount of work required to maintain the systems exceeds the City's in-house resources. This annual contract will provide outside resources to augment staff when needed to complete scheduled maintenance and to assist during emergency repairs due to sudden and unexpected system failures.

On May 13, 2015, six bids were received for on-call services for water distribution and sewage collections system repairs. The bids are summarized below.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Tom O'Neill
Department: MU/Operations

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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<u>Company</u>	<u>Location</u>	<u>Amount</u>
T.E. Roberts, Inc.	Tustin, CA	\$2,504,275
Mike Prlich & Sons, Inc.	Baldwin Park, CA	\$2,838,575
C.P. Construction Co., Inc.	Ontario, CA	\$3,315,693*
Ferreira Coastal Construction Company	Chino, CA	\$3,542,048
TK Construction	San Bernardino, CA	\$3,909,201
Norstar Plumbing & Engineering, Inc.	Alta Loma, CA	\$5,783,929

*For comparison purposes, the bid amount listed for C.P. Construction Co., Inc. reflects a 1% (\$1,500) local vendor preference in accordance with Section 2-6.19(b) of the Ontario Municipal Code representing the proportionate revenue the City would ultimately receive based on the estimated taxable sales of materials. The actual bid amount is \$3,317,193.

Staff recommends the award to T.E. Roberts, Inc. of Tustin, California, based on their expertise in water distribution and sewer system repairs, ability to perform the work in a timely manner and successful completion of this type of work in the past.

CITY OF ONTARIO

Agenda Report
July 21, 2015

**SECTION:
CONSENT CALENDAR**

SUBJECT: PURCHASE OF WATER METERS AND REPAIR PARTS

RECOMMENDATION: That the City Council approve and authorize the sole source purchase of new water meters and repair parts for a total not to exceed amount of \$2,400,000 from HD Supply Waterworks of Perris, California.

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

FISCAL IMPACT: The actual cost of meters to be purchased will be determined based on unit pricing for the various sizes of meters and actual meter repair, replacement and new installation needs. The Fiscal Year 2015-16 Water Operating budget includes \$2,400,000 for the purchase of new and replacement meters and repair parts. New developments pay for new meter installations while the cost of meter testing, repair and replacement is included in the rates the City bills for water service. There is no impact to the General Fund.

BACKGROUND: There are over 32,500 water meters citywide, which includes 4,500 meters that serve landscape areas, as well as industrial and commercial businesses. Approximately 28,000 meters are used for residential. The accuracy of meters has a direct relationship to accounting and billing for water service. To maintain accuracy and functionality, meters need to be replaced approximately every ten years and they are repaired as needed.

The Fiscal Year 2015-16 Work Plan includes replacement of approximately 3,250 meters, as part of the ten-year meter replacement program and new development, and development in the New Model Colony is expected to add an additional 800 to 1,000 new connections.

The Master Meter 3G Radio Read Meter was selected as the City standard specification for all new and replacement meter installations as a result of a public bid process and product evaluation that took place in 2001 when six different vendors and product lines were evaluated. To maintain consistency with our

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Tom O'Neill
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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standardized meters that are already in place throughout the City, the purchase of these new meters can only be made directly through the manufacturer. Section 2-6.11 (b) (2) of the Ontario Municipal Code states that sole source purchases are authorized if there is only one procurement source. HD Supply Waterworks is the exclusive distributor in California for Master Meter 3G Radio Read Meters and staff has reviewed pricing and recommends this sole source award to HD Supply.

CITY OF ONTARIO

Agenda Report
July 21, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER THE SALE OF CITY-OWNED PROPERTY; IN ACCORDANCE WITH GOVERNMENT CODE SECTION 37420 ET. SEQ., MAKING CERTAIN FINDINGS; AND ADOPTION OF A RESOLUTION APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND MGH ONTARIO, LLC, FOR THE REDEVELOPMENT OF THE FORMER SUNKIST GROWERS INC. FRUIT PACKING FACILITY

RECOMMENDATION: That the City Council conduct a public hearing to consider the sale of City-owned property; and adopt a resolution approving a Disposition and Development Agreement ("Agreement") between the City of Ontario ("City") and MGH Ontario, LLC. ("Developer") (on file with the Records Management Department); and authorize the City Manager to execute the Agreement and all other documents required for implementation of the Agreement, including the filing of the Certificate of Completion upon completion of the project.

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

FISCAL IMPACT: The City will convey approximately 11 acres of real property located at 616 East Sunkist Street ("Subject Parcel") for a purchase price of \$10.00 per square foot or approximately \$4,839,520, subject to the terms and conditions precedent to the close of escrow as contained in the Agreement.

BACKGROUND: In October 2008, the City of Ontario entered into an Agreement with Sunkist Growers Inc. for the acquisition of the Subject Parcel, water rights, and air credits. City staff worked closely with Sunkist Growers to ensure all structures on the former 11-acre Sunkist Growers Fruit Packing site ("Site") were removed and all site improvements completed prior to close of escrow in October 2012.

STAFF MEMBER PRESENTING: John Andrews, Economic Development Director

Prepared by: Charity Hernandez
Department: Economic Development

City Manager
Approval: 

Submitted to Council/O.R.A./O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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In June 2013, the City issued a Request for Proposals for the redevelopment of the Site. After a comprehensive review of the proposals by City staff and a presentation by the proposed developers, Majestic Realty Co. (AKA: MGH Ontario, LLC.) was identified as the preferred developer.

The subject Site is located in the industrial area of The Ontario Plan (just west of the Ontario Airport), and is designated for general industrial development. The Developer is proposing to construct a 229,350 square foot industrial project on the Site, including approximately 188 on-site parking spaces.

The Agreement provides for the conveyance of the Site to the Developer for the construction of the proposed industrial project and associated on-site landscape, hardscape and parking improvements. In addition, the Agreement provides for the Developer to preserve and retain the historical water tower as a cultural resource on-site. Lastly, the Developer will be required to provide proof that a long term binding lease has been executed for locating the business and occupying the building when constructed on the Site.

Completion of the subject development project will bring about a significant infill project in the industrial core area of the City. The project will provide over 200 new jobs to the City, with the associated increase in daytime population benefitting other commercial & service uses in the area.

Staff has determined that the project will require an Addendum to the existing General Plan Environmental Impact Report. Staff recommends that the City Council approve the use of the CEQA findings for the project and authorize the issuance of the Addendum to the General Plan Environmental Impact Report.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE OF ONTARIO, CALIFORNIA, APPROVING THE SALE OF PROPERTY PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MHG-ONTARIO, LLC FOR PROPERTY GENERALLY LOCATED AT 616 EAST SUNKIST STREET (APN 1049-221-01).

WHEREAS, the City is the owner of certain real property generally located at 616 East Sunkist Street (APN 1049-221-01) in the City of Ontario, County of San Bernardino, State of California ("Property"); and

WHEREAS, the Property consists of approximately 471,799 square feet of industrially zoned land, including the water tower located on such land, all minerals, oil and gas located on or beneath such land, and all other rights, privileges, entitlements, governmental permits, approvals and licenses, and other intangible property relating to or running with such land (the "Development Property"), specifically described in Exhibit "A-1" to the Disposition and Development Agreement ("Agreement"); and

WHEREAS, the Property also includes approximately 11,242 square feet of real property, adjacent to the Development Property, described in Exhibit "A-2" attached to the Agreement (the "Option Property"); and

WHEREAS, the Development Property and the Option are currently commonly known as 616 East Sunkist Street; and

WHEREAS, the City wishes to sell the Development Property to MHG Ontario, LLC, a Delaware limited liability company ("Developer"), and Developer wishes to purchase the Development Property; and

WHEREAS, the City wishes to sell to the Developer an option to purchase the Option Property and Developer wishes to acquire the option to purchase the Option Property; and

WHEREAS, Developer desires to redevelop the Development Property as an approximately 230,000 square foot Class A industrial building suitable for manufacturing and distribution as more particularly described in the Agreement ("Project"); and

WHEREAS, the construction of the Project will allow the Property to be utilized in a manner that benefits and serves the needs of the community; and

WHEREAS, for the purpose of transferring the Property to Developer and setting forth the terms and conditions by which Developer will construction the Project on the Development Property, Developer and City have negotiated the Agreement (MHG Ontario); and

WHEREAS, the Agreement also incorporates an option to purchase the Option Property which is currently encumbered by a Southern California Edison easement and certain facilities; and

WHEREAS, the City is attempting to have the Southern California Edison easement and facilities removed; and

WHEREAS, the City Council previously adopted Resolution No. 2015-076, pursuant to California Government Code Sections 37420 through 37430, which authorizes alternative methods for the City to sell the Property, in which the City Council, among other things, set forth its findings and intention to sell the Property and set July 21, 2015 at 6:30 pm, or as soon thereafter as the matter can be heard, as the date and time for holding a public hearing to hear protests to the sale; and

WHEREAS, having complied with the procedures set forth in California Government Code sections 37420 et. seq. by noticing and holding the public hearing to hear any protests, the City now desires to proceed with the sale of the Property to Developer.

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

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

SECTION 2. CEQA Compliance. The City has determined that the project will require an Addendum to the existing General Plan Environmental Impact Report. The City Council of the City hereby directs City staff to file a Notice of Determination with the San Bernardino County Clerk's Office within five (5) working days of the adoption of this Resolution.

SECTION 3. Protests to the Sale. Having heard any and all protests received in writing or orally at the public hearing, the City Council overrules any protests received and finds that public convenience and necessity require the sale of the Property pursuant to the Agreement. The sale of the Property is in the best interest of the City and the community as the development of the Property will provide for the redevelopment of a public site to a higher and better use, will generate economic growth through new jobs, both permanent and temporary, and stimulate additional development and job growth in the area.

SECTION 4. Approval of the Agreement. The City Council approves the disposition of the Property, including the Development Property and the Option Property, pursuant to the Agreement and directs and authorizes the City Manager to execute all documents and take all actions necessary to effectuate the intent of this Resolution.

SECTION 5. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be

given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that the Council would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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

SECTION 7. Effective Date. This Resolution shall take effect immediately

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

PASSED, APPROVED, AND ADOPTED this 21st day of July, 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 July 21, 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 July 21, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN ADDENDUM TO THE ONTARIO PLAN ENVIRONMENTAL IMPACT REPORT FOR THE SALE OF PROPERTY PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND MHG-ONTARIO, LLC FOR PROPERTY GENERALLY LOCATED AT 616 EAST SUNKIST STREET FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1049-221-01.

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of Ontario prepared an Initial Study and approved for circulation an Addendum for the sale of property pursuant to a Disposition and Development Agreement by and between the City of Ontario and MGH-Ontario, LLC for property generally located at 616 East Sunkist Street (the “addendum”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, The Disposition and Development Agreement (the “Project”) analyzed under the Addendum consists of the sale and development of 11 acres of land between the City of Ontario and MGH-Ontario, LLC for property generally located at 616 East Sunkist Street (the “addendum”), in order to establish consistency with The Ontario Plan (TOP); and

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

WHEREAS, in January 2010, the City Council certified TOP Final Environmental Impact Report (“EIR”) (SCH # 2008101140), adopted an update on the Ontario General Plan and the Preferred Land Use Plan, made Mitigation Findings and adopted a Statement of Overriding Considerations pursuant to CEQA; and

WHEREAS, TOP EIR contains an analysis of the environmental setting of the City at the time of its certification and also analyzes the environmental impact of build-out of the land use and associated zone changes to achieve TOP Vision and evaluates and analyses the principles, goals and policies enumerated in the Addendum that are furthered and carried out by the Project; and

WHEREAS, pursuant to CEQA section 21166 and sections 15162 and 15163 of the CEQA Guidelines, an Addendum to the TOP EIR was prepared by the City with regard to the Project (“Addendum”). The Addendum incorporates, by reference, the analysis contained in TOP EIR, and addresses only those issues specific to the Project. The Addendum concludes that the project will not result in impacts beyond what was previously analyzed in TOP EIR, because the Project does not have new environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly; and

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

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

WHEREAS, the Addendum for the Project and TOP EIR is on file in the Planning Department, located at 303 East B Street, Ontario, CA 91764, is available for inspection by any interested person at that location and is, by this reference, incorporated into this Resolution as if fully set forth herein;

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

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

SECTION 2. THAT THE City Council does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby approve the Addendum prepared for the Project and find, pursuant to CEQA Guideline sections 15162 and 15164, that the Project will not result in any new, increased or substantially different impacts, other than those previously considered and addressed in the TOP EIR and that no changes or additions to TOP EIR analyses are necessary, nor is there a need for any additional mitigation measures (Planning File No. PDCA11-003).

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

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

PASSED, APPROVED AND ADOPTED this 21st day of July, 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 July 21, 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 July 21, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
July 21, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO UPDATE CERTAIN INFRASTRUCTURE PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF UP TO 1,146 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL ON 178.66 ACRES OF LAND WITHIN PLANNING AREAS 9A, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE (ONTARIO RANCH ROAD), BETWEEN TURNER AVENUE AND HAVEN AVENUE

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving an amendment (File No. PDA15-002) to the Development Agreement between the City of Ontario and BrookCal Ontario, LLC, (File No. PDA15-002, on file in the Records Management Department), to update certain infrastructure provisions of the existing development agreement for the development of up to 178.66 acres of land within planning areas 9A, 10A, 10B and 11 of the Avenue Specific Plan, located south of Schaefer Avenue, North of Edison Avenue (Ontario Ranch Road), between Turner Avenue and Haven Avenue.

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

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

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

FISCAL IMPACT: As part of the original Development Agreement, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. The Development Agreement requires the developer to construct public infrastructure. The Amendment

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 07/21/2015

Approved: _____

Continued to: _____

Denied: _____

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affects the timing of those infrastructure improvements and does not impact fiscal considerations previously agreed to by the developer and the City.

BACKGROUND: On June 3, 2014, the City Council approved a Development Agreement (File No. PDA05-002) between the City of Ontario and BrookCal Ontario, LLC, to provide the funding for additional City services required to support the development of up to 1,146 residential units and 10 acres of commercial land. The Development Agreement and the proposed Amendment applies to 171.38 acres (Tract Map 18922) of land within Planning Areas 9A, 10A, 10B and 11 of The Avenue Specific Plan, located south of Schaefer Avenue, north of Edison Avenue (Ontario Ranch Road), between Turner Avenue and Haven Avenue (Exhibit “A”).

The Development Agreement granted to BrookCal Ontario, LLC, a vested right to develop the project subject to the terms and conditions of the Development Agreement and The Avenue Specific Plan. The proposed Amendment continues to apply to the same area as the original Development Agreement and incorporates new infrastructure provisions to Phase 1 and 2 of the recycled water requirements and Phase 1 street improvements. The Amendment consists of modifications to Section 1.2 Exhibits (Infrastructure Requirements and Phasing), Section 3.7.6, and Sections 4.31, including Section 4.3.1.1 through 4.3.1.7 to the Development Agreement as follows:

Section 3.7.6 Recycled Water – Modifications to Phase 1 and Phase 2 of the Recycled Water Improvements to:

- Amended Phase 1 recycled water improvements to allow the construction of recycled water lines in either Ontario Ranch Road (Edison Avenue) or Schafer Avenue from Archibald Avenue to Haven Avenue to serve the Property or another point of connection acceptable to City to serve the Property.
- Allow for a “Well Use Agreement.” The Well Use Agreement will provide for the use of agricultural well water, in-lieu of recycled water, to serve up to the first 100 production units until the full completion of the Phase I recycled water improvements by owner, subject to the following conditions:
 1. The processing of Well Use Agreement Amendment;
 2. A 30 day status report on the completion of permanent recycled water improvements;
 3. The requirement of a bond or deposit for operation and future abandonment of the agriculture well; and
 4. The completion of Phase 1 permanent recycled water improvements and the abandonment of the agriculture well prior to issuance of 100th building permit.
- Amend Phase 2 of the recycled water requirements to divide improvements into “owner’s portion” of Phase 2 recycled water improvements and the “NMC portion” of Phase 2 recycled water improvements. The owner’s portion consists of recycled water line in Haven Avenue from Schaeffer Avenue north to the pressure reduction station at Chino Avenue and in Haven Avenue from Ontario Ranch Road south to the southern Project limits of Phase 4F (Old Edison Avenue) and subject to:
 1. Owner’s portion of Phase 2 recycled water design shall be completed by September 1, 2015;

2. A deposit from NMC Builders will be required for Phase 2 prior September 1, 2018;
3. Owner to initiate construction of owner's portion of Phase 2 recycled water prior to September 1, 2018, and complete construction by September 1, 2019; and
4. NMC Builders to initiate construction of Phase 2 recycled water improvements by September 1, 2018, and complete Phase 2 by September 1, 2019. If NMC Builders fail to construct Phase 2, then owner shall construct improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 Public Improvements - Phase 1 circulation is dependent on the completion of Ontario Ranch Road from Milliken Avenue to the project site. The City agrees to issue up to 50 building permits for production units prior to the completion of Ontario Ranch Road, subject to:

- Phase 1 completion of infrastructure improvements (water, sewer and storm drain);
- Owner agrees not to enter into any purchase/sales agreement and in no event shall escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to the Owner's substantial completion of all required street improvements to Ontario Ranch Road as part of the Phase 1 improvements as shown on Exhibit F-R Phase 1; and

The term of Development Agreement and the Amendment will continue to be for ten years with a five year option and require funding for all new City expenses created by the development of the project. These expenses include Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, police, fire, open space/parks etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees.

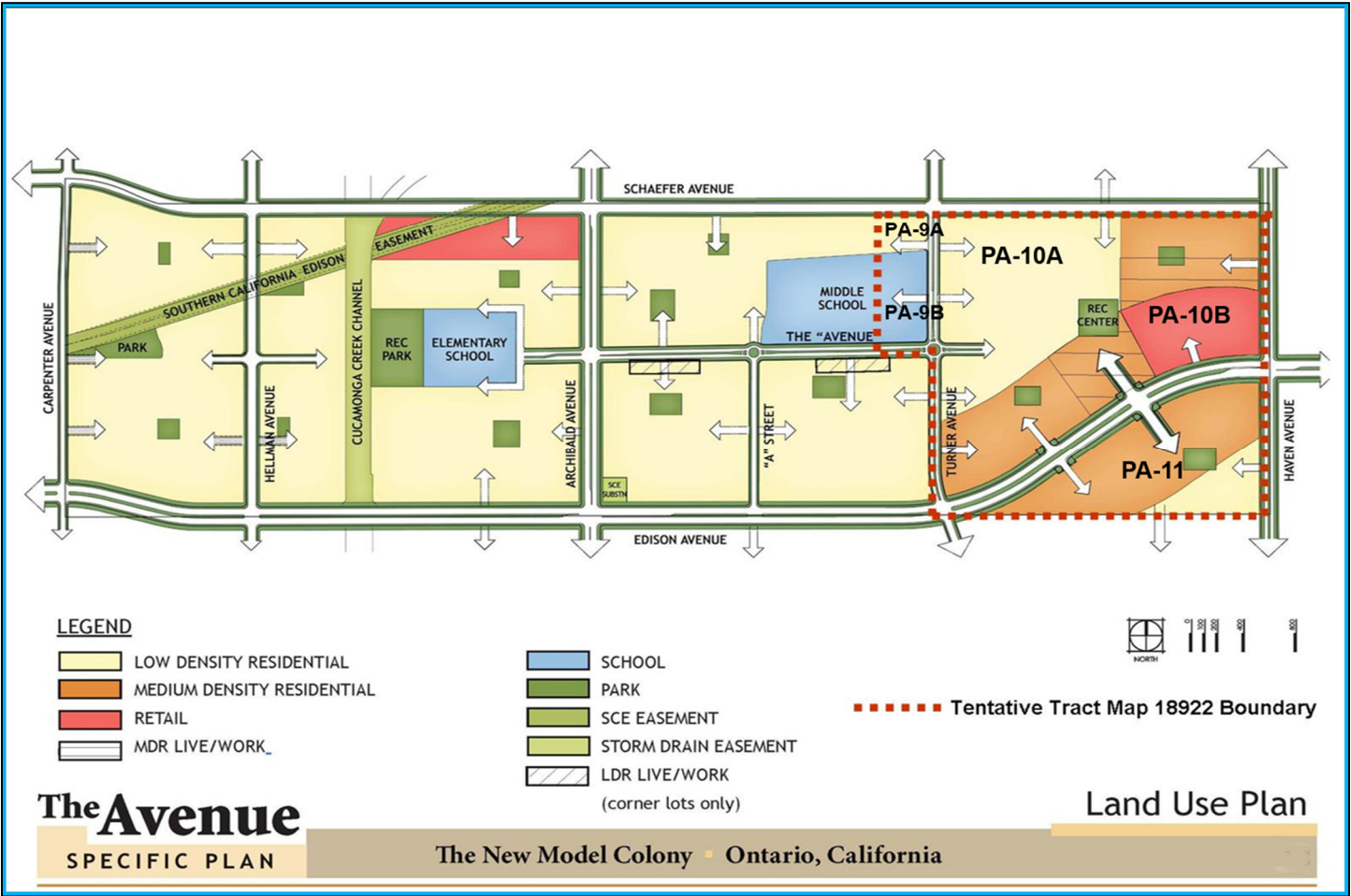
Other points addressed by the Agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View School District and Chaffey High School District school facilities requirements.

In considering the application at their meeting of June 23, 2015, the Planning Commission found that the Development Agreement Amendment is consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for NMC development. As a result, the Planning Commission voted unanimously (7-0) recommending approval of the Development Agreement Amendment to the City Council.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"

THE AVENUE SPECIFIC PLAN





PLANNING COMMISSION STAFF REPORT

June 23, 2015

SUBJECT: A Development Agreement (First Amendment) between the City of Ontario and BrookCal Ontario, LLC, to amend Development Agreement File No. PDA 10-002 to update certain infrastructure provisions of the existing Development Agreement for the development of up to 1,146 residential units and 10 acres of commercial on 178.66 acres of land within Planning Areas 9A, 10A, 10B and 11 of The Avenue Specific Plan, located south of Schaefer Avenue, north of Edison Avenue (Ontario Ranch Road), between Turner Avenue and Haven Avenue.

PROPERTY OWNER: BrookCal Ontario, LLC

RECOMMENDED ACTION: That the Planning Commission receive supporting documentation into the record and adopt a resolution making certain findings and recommending that the City Council approve an Amendment to the Development Agreement City of Ontario and BrookCal Ontario, LLC.

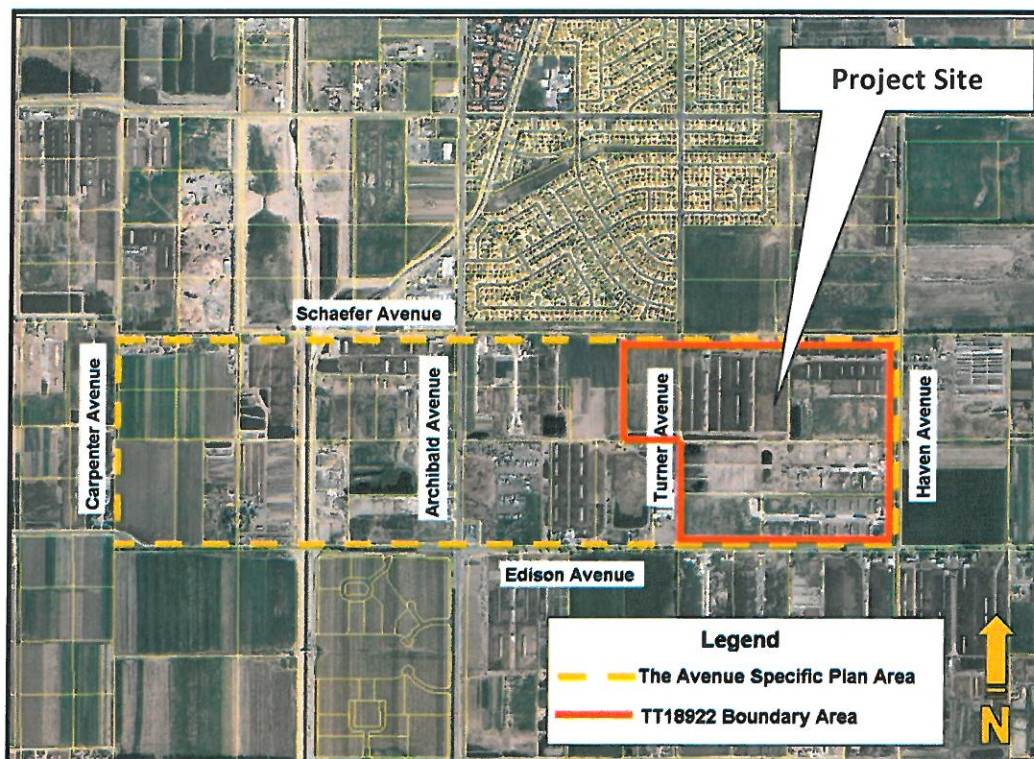
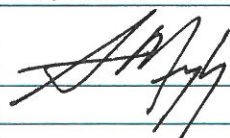


Figure 1. Location Map

Case Planner: Rudy Zeledon, Principal Planner	Hearing Body	Date	Decision	Action
Planning Director Approval: 	DAB			
Submittal Date:	ZA			
Hearing Deadline:	PC	06/23/2015	Approved	Recommend
	CC			Final

BACKGROUND: On November 28, 2006, the Planning Commission recommended approval of The Avenue Specific Plan (File No. PSP05-002) and Environmental Impact Report (EIR) and forwarded them to the City Council for its consideration. On December 9, 2006, the City Council certified the EIR and adopted an ordinance approving the Specific Plan. On June 3, 2014, the City Council approved the Development Agreement (File PDA10-002) between City of Ontario and BrookCal Ontario, LLC.

The Development Agreement granted the development of up to 1,146 residential units and 10 acres of commercial for 171.38 acres (Tentative Tract Map 18922) of land generally located within Planning Areas 9A, 10A, 10B and 11 of The Avenue Specific Plan, located south of Schaefer Avenue, north of Edison Avenue (Ontario Ranch Road), between Turner Avenue and Haven Avenue.

State law and Section 2.5 of the existing Development Agreement provide that amendments may be made to the Development Agreement upon the mutual agreement of the parties, using the same process and procedures as for the consideration and approval of the original Development Agreement. BrookCal Ontario, LLC, is now seeking to amend the Development Agreement to update infrastructure provisions.

STAFF ANALYSIS: The proposed Amendment continues to apply to the same area as the original Development Agreement and incorporates new infrastructure provisions to Phase 1 and 2 of the recycled water requirements and Phase 1 street improvements. The Amendment consist of modifications to Section 1.2 Exhibits, Section 3.7.6, and Sections 4.31, including Section 4.3.1.1 through 4.3.1.7 to the Development Agreement as follows:

Section 3.7.6 Recycled Water – Modifications to Phase 1 and Phase 2 of Recycled Water Improvements:

Amended Phase 1 recycled water improvements to allow the construction of recycled water lines in either Ontario Ranch Road (Edison Avenue) from Archibald Avenue to Haven Avenue to serve the Property, or Schafer Avenue from Archibald Avenue to Haven Avenue to serve the Property or another point of connection acceptable to City to serve the Property.

City approval for use of agricultural well water, known as the “Well Use Agreement.” The Well Use Agreement will provide for the use of agricultural well water in-lieu of recycled water to serve the Property until the full completion of the Phase I recycled water improvements by owner, subject to the following conditions:

Agriculture water wells, in lieu of recycled water, may be used for up first 100 building permits for production Units subject to:

1. The processing of Well Use Agreement Amendment;
2. A 30 day status report on the completion of permanent recycled water improvements;

3. The requirement of a bond or deposit for operation and future abandonment of the agriculture well; and
4. The completion of Phase 1 permanent recycled water improvements and the abandonment the agriculture well prior to issuance of 100th building permit.

Amend Phase 2 of the recycled water requirements to divide improvements into "owner's portion" of Phase 2 recycled water improvements and the "NMC portion" of Phase 2 recycled water improvements. The owner's portion consists of recycled water line in Haven Avenue from Schaeffer Avenue north to the pressure reduction station at Chino Avenue and in Haven Avenue from Ontario Ranch Road south to south Project limits of Phase 4F (Old Edison Avenue) and subject to:

1. Owner's portion of Phase 2 recycled water design shall be completed by September 1, 2015;
2. A deposit for NMC Builders will be required for Phase 2 prior September 1, 2018;
3. Owner to initiate construction of owner's portion of Phase 2 recycled water prior to September 1, 2018 and complete construction by September 1, 2019; and
4. NMC Builders to initiate construction of Phase 2 recycled water improvements by September 1, 2018 and complete Phase 2 by September 1, 2019. If NMC Builders fail to construct Phase 2, then owner shall construct improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 Public Improvements - Phase 1 circulation is dependent on the completion of Ontario Ranch Road from Milliken Avenue to the project site. The City agrees to issue up to 50 building permits for production units prior to the completion of Ontario Ranch Road, subject to:

- c. Phase 1 completion of infrastructure improvements (water, sewer and storm drain);
- d. Owner agrees not to enter into any purchase/sales agreement and in no event shall escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to the Owner's substantial completion of all required street improvements to Ontario Ranch Road as part of the Phase 1 improvements as shown on Exhibit F-R Phase 1; and

The term of Development Agreement and the Amendment will continue to be for ten years with a five year option and require funding for all new City expenses created by the development of the project. These expenses include Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, police, fire, open space/parks etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities

District (CFD) for reimbursement of public improvements and maintenance of public facilities; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees.

Other points addressed by the Agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View Elementary School District and Chaffey High School District school facilities requirements.

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

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

[1] City Council Priorities

Primary Goal: Regain Local Control of the Ontario International Airport

Supporting Goals:

- Invest in the Growth and Evolution of the City's Economy;
- Focus Resources in Ontario's Commercial and Residential Neighborhoods;
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities); and
- Ensure the Development of a Well Planned, Balanced, and Self-sustaining Community in the New Model Colony.

[2] Policy Plan (General Plan)

a. *Land Use Element – Balance*

Goal: LU1: A community that has a spectrum of housing types and price ranges that match the jobs in the City and make it possible for people to live and work in Ontario and maintain a quality of life.

Policies:

LU1-1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.

LU1-3 *Adequate Capacity*. We require adequate infrastructure and services for all development.

LU1-6 *Complete Community*. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

b. *Land Use Element -Flexibility*

Goal: LU3 Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

Policies:

LU3-1 *Development Standards*. We maintain clear development standards which allow flexibility to achieve our vision.

LU3-3 *Land Use Flexibility*. We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity.

c. *Land Use Element-Phased Growth*

Goal: LU4 Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.

Policies:

LU4-1 *Commitment to Vision*. We are committed to achieving our vision but realize that it may take time and several interim steps to get there.

LU4-3 *Infrastructure Timing*. We require that the necessary infrastructure and services be in place prior to or concurrently with development.

d. *Housing Element – Neighborhood & Housing*

Goal: H3 A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.

Policies:

H1-3 *Community Amenities*. We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.

H3-3 Development Review. We maintain a residential development review process that provides certainty and transparency for project stakeholders and the public yet allows for the appropriate review to facilitate quality housing development.

e. Parks and Recreation Element – Planning & Design

Goal: PR1 A system of safe and accessible parks that meets the needs of the community.

Policies:

PR1-6 *Private Parks.* We expect development to provide a minimum of 2 acres of developed private park space per 1,000 residents.

PR1-9 *Phased Development.* We require parks be built in new communities before a significant proportion of residents move in.

f. Community Design Element – Design Quality

Goal: CD2 A high level of design quality resulting in the public spaces, streetscapes, and development that are attractive, safe, functional and distinct

Policies:

CD2-13 *Entitlement Process.* We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

g. Community Design Element – Protection of Investment

Goal: CD5 A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.

Policies:

CD5-2 *Improvements to property and Infrastructure.* We provide programs to improve property and *Infrastructure*

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental

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assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT A

THE AVENUE SPECIFIC PLAN MAP



RESOLUTION NO. PC 15-040

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO AMEND DEVELOPMENT AGREEMENT FILE NO. PDA 10-002 TO UPDATE CERTAIN INFRASTRUCTURE PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF UP TO 1,146 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL ON 178.66 ACRES OF LAND WITHIN PLANNING AREAS 9A, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE (ONTARIO RANCH ROAD), BETWEEN TURNER AVENUE AND HAVEN AVENUE., AND MAKING FINDINGS IN SUPPORT THEREOF. (APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 AND 0218-201-45)

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, on the 3rd day of June 2014, the City Council of the City of Ontario, adopted Ordinance No. 2989, approving a Development Agreement between BrookCal Ontario, LLC, and the City; and

WHEREAS, attached to this resolution, marked Exhibit "A" and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between BrookCal Ontario, LLC, and the City of Ontario, File No. PDA15-002. Hereinafter in this Resolution, the Development Agreement is referred to as the "Amendment"; and

WHEREAS, as the environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on June 23, 2015, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date; and

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

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

SECTION 1. The Planning Commission hereby specifically finds that all facts set

forth in the Recitals, Part A, of this Resolution are true and correct.

SECTION 2. Based upon substantial evidence presented to the Planning Commission during the above-referenced hearing on June 23, 2015, including written and oral staff reports, together with public testimony, the Planning Commission hereby specifically finds as follows:

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

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

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

d. The Amendment to the Development Agreement consist of modifications to Sections 1.2 Exhibits, Section 3.7.6, and Sections 4.31, including Section 4.3.1.1 through 4.3.1.7 to the Development Agreement as follows:

Section 3.7.6 Recycled Water – Modifications to Phase 1 and Phase 2 of the Recycled Water Improvements:

Amended Phase 1 recycled water improvements to allow the construction of recycled water lines in either Ontario Ranch Road from Archibald Avenue to Haven Avenue to serve the Property, or Schafer Avenue from Archibald Avenue to Haven Avenue to serve the Property or another point of connection acceptable to City to serve the Property.

City approval for use of agricultural well water, known as the "Well Use Agreement." The Well Use Agreement will provide for the use of agricultural well water in-lieu of recycled water to serve the Property until the full completion of the Phase I Recycled

Water Improvements by owner, subject to the following conditions:

Agriculture water wells may be used for up first 100 building permits for production Units subject to:

1. The processing of Well Use Agreement Amendment;
2. A 30 day status report on the completion of permanent recycled water improvements;
3. The requirement of a bond or deposit for operation and future abandonment of the agriculture well; and
4. The completion of Phase 1 permanent recycled water improvements and the abandonment the agriculture well prior to issuance of 100th building permit.

Amend Phase 2 of the recycled water requirements to divide Improvements into "owner's portion" of Phase 2 recycled water improvements and the "NMC portion" of Phase 2 recycled water improvements. The owner's portion consists of Recycled Water line in Haven Avenue from Schaeffer Avenue north to the Pressure Reduction Station at Chino Avenue and in Haven Avenue from Ontario Ranch Road south to south Project limits of Phase 4F (Old Edison Avenue) and subject to:

1. Owner's portion of Phase 2 recycled water design shall be completed by September 1, 2015;
2. A deposit for NMC Builders will be required for Phase 2 prior September 1, 2018;
3. Owner to initiate construction of owner's portion of Phase 2 recycled water prior to September 1, 2018 and complete construction by September 1, 2019; and
4. NMC Builders to initiate construction of Phase 2 recycled water improvements by September 1, 2018 and complete Phase 2 by September 1, 2019. If NMC Builders fail to construct Phase 2, then owner shall construct improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 Public Improvements - Phase 1 circulation is dependent on the completion of Ontario Ranch Road from Milliken Avenue to the project site. The City agrees to issue up to 50 building permits for production units prior to the completion of Ontario Ranch Road, subject to:

- e. Phase 1 completion of infrastructure improvements (water, sewer and storm drain);
- f. Owner agrees not to enter into any purchase/sales agreement and in no event shall escrow(s) for the sale of any individual lot(s)

within Phase 1 be opened prior to the Owner's substantial completion of all required street improvements to Ontario Ranch Road as part of the Phase 1 improvements as shown on Exhibit F-R Phase 1; and

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

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

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

j. The Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

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

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

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

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

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 23rd day of June 2015, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Jim Willoughby
Planning Commission Chairman

ATTEST:



Scott Murphy, Planning Director
Secretary of Planning Commission

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

I, Marci Callejo, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC15-040 was duly passed and adopted by the Planning Commission of the City of Ontario at a meeting held on June 23, 2015, by the following roll call vote, to wit:

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

NOES: None

ABSENT: None

ABSTAIN: None



Marci Callejo
Secretary Pro Tempore

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC**

This First Amendment (hereinafter "First Amendment") is entered into effective as of the _____ day of _____ 2015 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, a California limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement dated June 3, 2014 and recorded in San Bernardino County, California on August 20, 2014 as Instrument No. 2014-0303401 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Development Agreement"); and

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

WHEREAS, CITY and the NMC Builders LLC have entered into an agreement that provides that the NMC Builders LLC shall complete the design of a portion of the Master Planned Recycled Water improvements referenced in the Development Agreement as Phase 2 Recycled Water Improvements by September 1, 2015, and the agreement between the CITY and NMC Builders LLC also provides that NMC Builders shall initiate and complete construction the Phase 2 Recycled Water Improvements prior to September 1, 2019 and therefore, CITY and OWNER have agreed to modify certain requirements related to OWNER's responsibility to design and construct the Phase 2 Recycled Water Improvements, and

WHEREAS, the Development Agreement reflects certain assumptions that the consortium of developers, organized as NMC Builders LLC would jointly-fund and construct certain major public infrastructure improvements, including a significant portion of the permanent water facilities, permanent recycled water facilities, major street sections and signalized street intersections that serve the Property and are required to be completed prior to the issuance of building permits for Production Units in Phase 1 and NMC Builders LLC has been delayed in completion of the construction of these permanent facilities and will likely not complete the construction of these permanent facilities prior to OWNER's need for CITY to issue building permits for Production Units for Phase 1; and

WHEREAS, OWNER has requested and CITY has agreed modify certain specified requirements for the completion of Phase 1 Improvements and that may include the use

of interim facility connections for recycled water for the Project until the construction of permanent recycled water facilities have been completed by NMC Builders LLC; and

WHEREAS, OWNER has entered into a Subdivision Improvement Agreement to provide security for the funding and completion of the Phase 1, 2, 3, and 4-F improvements that are being constructed by OWNER; and

WHEREAS, OWNER has requested that CITY agree to temporarily defer requirements of the Development Agreement and Conditions of Approval for Tract 18922, including the requirements of the Subdivision Improvement Agreement requiring the completion of the construction certain Phase 1 Improvements; and

WHEREAS, CITY and NMC Builders LLC have entered into the New Model Colony Escrow Instructions and the related Escrow Account Control Agreement to provide CITY with sufficient security for the funding of the Phase I Improvements that are being constructed by NMC Builders LLC; and

WHEREAS, OWNER is requesting that CITY issue building permits for the construction of Model Units and Production Units and OWNER has not completed the construction of certain Phase I Improvements in compliance with the terms of the Development Agreement and Conditions of Approval of Tract 18922; and

WHEREAS, CITY and OWNER have agreed that CITY may issue building permits for the construction of Model Units and Production Units conditioned upon OWNER's completion or substantial completion of alternate Phase 1 improvements and compliance with other CITY requirements.

AGREEMENTS

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

A. Modifications to Section 1.1 – Definitions

The following definitions shall be added or amended in Section 1.1- Definitions as follows and the resulting defined terms shall be renumbered accordingly:

1.1.3 (new) "Completed" and "Completion" with respect to the Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements and the Phase 4-F Improvements means that such improvements have been completed in accordance with the approved plans, including any final "punch list" items, as approved in writing by the City Inspector such Improvements are Usable.

1.1.19 (new) "OWNER'S Portion of Phase 2 Recycled Water System Improvements" means the extension of master planned recycled water system improvements in Haven Avenue from Schaefer Avenue north to the Pressure Reduction

Station at Chino Avenue and in Haven Avenue from Edison Avenue south to the south Project limits of Phase 4F.

1.1.20 (new) "Phase 1 Recycled Water Improvements" means the extension of the recycled water system to serve the Property as described in the attached Exhibit F- Phase 1-R.

1.1.24 (amended, formerly 1.1.21) "Phase 2 Recycled Water System Improvements" means the extension of master-planned recycled water system improvements in Riverside Drive and Haven Avenue as described in the Attached Exhibit E-R.

1.1.38 (new) "Substantially Completed" and "Substantial Completion" with respect to the Phase 1 Improvements, Phase 2 Improvements, Phase 3 Improvements and Phase 4F Improvements means that such Improvements are substantially complete in accordance with the approved plans and are Usable, notwithstanding any final "punch list" items or nonessential items still required to be completed, unless such items are required for the safe operation of such Improvement, as approved in writing by the City inspector. For purposes of this definition, non-essential items with respect to street Improvements shall include the final asphalt cap and may include other non-essential items including parkway landscaping improvements and sidewalk construction.

1.1.39 (amended) "Usable" shall mean that, with respect to any particular Improvement, the Improvement is actually able to be used for its intended purposes, and includes, for water Improvements connection to the applicable water supply, for sewer Improvements connection to an applicable disposal system, and for recycled water Improvements connection to a treated water supply and distribution system.

B. Modifications to Section 1.2 Exhibits. of the Development Agreement.

The following Exhibits shall be replaced by the following revised Exhibits:

Exhibit "E-R" — Infrastructure Improvements Exhibit (All Phases)

Exhibit "F-R-Phase 1" - Phase 1 Improvements Exhibit.

Exhibit "F-R-Phase 2" - Phase 2 Improvements Exhibit

Exhibit "F-R-Phase 3" - Phase 3 Improvements Exhibit

Exhibit "F-R-Phase 4/F" - Phase 4 Improvements Exhibit

C. Modifications to Section 3.7.6.

Section 3.7.6 shall be amended in its entirety to read as follows:

"3.7.6 (a) OWNER agrees that development of the Property shall require the design and construction of permanent master planned recycled water utility infrastructure as

described in the revised Exhibit F-R-Phase 1 as the "Phase 1 Recycled Water Improvements," consisting generally of the construction of permanent master planned recycled water utility infrastructure in either (i) Edison Avenue from Archibald Avenue to Haven Avenue to serve the Property, or (ii) Schaefer Avenue from Archibald Avenue to Haven Avenue to serve the Property as described in the revised Exhibit F-R-Phase 1 or, (iii) another point of connection acceptable to CITY. If permanent master planned recycled water facilities required to be completed as part of the Phase 1 Recycled Water Improvements are not completed and operational by such time as OWNER is otherwise fully entitled to request Production Unit building permits, CITY shall issue up to a maximum number of one hundred (100) building permits in addition to building permits issued for the Model Units prior to completion of the Phase 1 Recycled Water Improvements. CITY's agreement to issue building permits for up to a maximum number of one hundred (100) Production Unit building permits prior to the completion of the Phase 1 Recycled Water Improvements by OWNER is conditioned upon OWNER's strict compliance with the following covenants and conditions precedent:

- i. Following the first date of CITY's issuance of the first building permits for Production Units OWNER shall provide to CITY's City Engineer or his designee, on a periodic basis, not more than each 30 calendar days, a written status report for the completion of the Phase 1 Recycled Water Improvements. Such status report shall include, at a minimum, the information regarding the current status of the construction project and the projected completion date for the construction project.
- ii. OWNER shall initiate and diligently pursue CITY approval of a standard amendment to the existing agreement between OWNER and CITY for use of agricultural well water, known as the "Well Use Agreement." The amendment to Well Use Agreement shall provide for the use of agricultural well water in-lieu of recycled water to serve the Property until the full completion of the Phase I Recycled Water Improvements by OWNER.
- iii. OWNER shall cease use of agricultural well water in-lieu of recycled water to serve the Property and shall have completed a permanent connection to master planned recycled water facilities prior to, and as a condition precedent to CITY's issuance of any building permits for Production Units beyond the maximum number of one hundred (100) building permits, referenced above.
- iv. OWNER shall also provide security, in the form of a Performance Bond, in a form acceptable to the City Engineer to ensure that OWNER shall continue to be responsible to operate and maintain OWNER's agricultural well facilities until permanent master planned recycled water facilities are completed and recycled water is available to serve the Property and that the permanent connection to recycled water is completed and the agricultural well facilities are properly abandoned. The amount of the Performance Bond shall be not less than Twenty-thousand dollars (\$20,000.00). Subject to the terms of Section 6 of the Development

Agreement, if, at any time, OWNER fails to perform OWNER's responsibilities for the operation and maintenance of the agricultural well facilities, as required by CITY, OWNER agrees that CITY shall proceed to call, and require performance by, the issuer of the Performance Bond. CITY and OWNER acknowledge that the connection to Recycled Water facilities in Archibald Avenue are required to provide Recycled Water service to the Project and others are responsible for the completion of the construction of Recycled Water facilities in Archibald Avenue. If such facilities are completed by others and Recycled Water facilities are available for connection of the OWNER's Phase I Recycled Water, OWNER shall complete the construction of the Phase I Recycled Water Improvements prior to September 1, 2015. If such facilities are completed by others and available for connection to serve the Project and OWNER has not completed the Phase 1 Recycled Water Improvements prior to September 1, 2015, OWNER shall be considered to have breached this First Amendment and OWNER agrees that CITY shall proceed to call and require performance by, the issuer of the Performance Bonds for the Project or CITY may complete the construction of the Phase I Recycled Water Improvements and access any funds held in Escrow for the construction of the Phase I Recycled Water Improvements. Additionally, CITY may, without liability, withhold future discretionary or ministerial permits and entitlements for OWNER's Project unless and until the Phase I Recycled Water Improvements are constructed, accepted by the City and operational. CITY shall release the security for the maintenance of the agricultural well facilities, in the form of the Performance Bond, upon completion of the permanent recycled water connection to the Property and the abandonment of the agricultural well facilities.

- (b.) OWNER also agrees that OWNER shall be responsible for the design and construction of permanent master planned recycled water utility infrastructure in Haven Avenue from Schaeffer Avenue north to the Pressure Reduction Station at Chino Avenue and in Haven Avenue from Edison Avenue south to south Project limits of Phase 4F as shown on the revised Exhibit E-R (and Exhibit Phase 2-R) and NMC Builders shall be responsible for the design and construction of an additional extension of master planned recycled water infrastructure in Riverside and Haven Avenues (collectively, the "Phase 2 Recycled Water Improvements") to serve the Project as described in the attached Exhibit E-R. OWNER shall complete the design of OWNER's portion of the Phase 2 Recycled Water Improvements prior to September 1, 2015. Prior to September 1, 2018, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the NMC Builders portion of the Phase 2 Recycled Water Improvements to be designed and constructed by NMC Builders. Prior to September 1, 2018 OWNER shall also initiate construction of OWNER's portion of the Phase 2 Recycled Water Improvements. If OWNER has not deposited such amount with NMC Builders, or if NMC Builders has not initiated construction of the NMC Builders portion of the Phase 2 Recycled

Water System Improvements, prior to September 1, 2018, OWNER shall initiate and complete the design and construction of both OWNER's portion and the NMC Builders portion of the Phase 2 Recycled Water System Improvements no later than September 1, 2019. OWNER acknowledges and agrees that if OWNER or NMC Builders has not completed the design and construction of both portions of the Phase 2 Recycled Water System Improvements prior to September 1, 2019, then CITY shall be entitled to withhold issuance of any further building permits for the Project unless and until the design and construction of both portions of the Phase 2 Recycled Water System Improvements are completed. If NMC Builders or others have completed the design and completed construction of the required Phase 2 Recycled Water System Improvements prior to September 1, 2019 then OWNER shall not be required to construct such improvements and OWNER shall not be eligible to receive the special reimbursement described in Section 4.3.3.1."

D. Modifications to Section 4.3 Timely Construction of Public Improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 shall be amended as follows:

"4.3.1 Timely Construction of Public Infrastructure. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each Phase of the Project as shown on the attached Exhibits for each Phase of the Project. OWNER shall also be responsible for compliance with any and all other tract map conditions. Unless otherwise specified in this Amendment, the Subdivision Agreement or the Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase 1 Units as shown on Exhibit F-R- Phase 1. Additionally, unless otherwise specified in a Subdivision Agreement or Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 1 area of Exhibit F-R- Phase 1 shall be completed (or substantially completed in the case of street improvements) and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of any building permit for any Production Unit within each such "B" Tract Map. When OWNER is required to complete only the design of a required improvement as a condition of a phased tract map, the design of such required improvement shall be deemed completed when the design plans have been submitted by OWNER and approved by CITY.

4.3.1.1 OWNER shall design, or design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure required for Phase 1 of the Project as shown on Exhibit F-R Phase 1 prior to, and as a condition precedent to, CITY's issuance of the first building permit for any Production Unit for the Property. Notwithstanding the above, CITY and OWNER have agreed that if certain street improvements to Edison Avenue as shown on Exhibit F-R-Phase

1 are not substantially complete prior to OWNER's application to CITY for issuance of building permits for Production Units in Phase 1, CITY shall issue up to fifty (50) Production Unit building permits for Production Units in Phase 1. CITY's agreement to issue building permits for up to a maximum number of fifty (50) building permits prior to the substantial completion of the street improvements to Edison Avenue by OWNER, or others, is conditioned upon OWNER's strict compliance with the following covenants and conditions precedent:

- i. OWNER shall have completed (or substantially completed in the case of street improvements) other Phase 1 Improvements as shown on Exhibit F-R- Phase 1, including the connection of all Model Units to permanent master planned facilities for water, sewer, and storm drainage.
- ii. OWNER shall have completed the Phase 1 Recycled Water improvements to provide the permanent connection to permanent master planned recycled water facilities or OWNER shall be in strict compliance with the requirements of Section 3.7.6.1 i, iii and iv, above.
- iii. Owner may engage in marketing activities relating to building permits for the construction of Production Units on individual lots within Phase 1, however, OWNER covenants and agrees that that OWNER shall not enter into any purchase /sales agreements and in no event shall any escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to OWNER's substantial completion of all street improvements to Edison Avenue required as part of the Phase 1 Improvements as shown on Exhibit F-R Phase 1.

4.3.1.2 OWNER shall complete the design and initiate construction of OWNER's Portion of the Phase 2 Recycled Water System Improvements as shown on Exhibit F-R – Phase 2, prior to September 1, 2018. If NMC Builders has not completed the design and initiated construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements prior to September 1, 2018 OWNER shall complete the design and initiate construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements.

4.3.1.3 OWNER shall complete construction of OWNER's Portion of the Phase 2 Recycled Water System Improvements as shown on the Exhibit F-R-Phase 2 consisting of the extension of the master planned Recycled Water improvements in Haven Avenue from Schaefer Avenue north to the pressure reducing station at Chino Avenue and in Haven Avenue from Edison Avenue south to the south project limits of Phase 4F, prior to September 1, 2019 and if OWNER has initiated construction of the NMC Builders portion of the Phase 2 Recycled Water Improvements OWNER shall complete the construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements by September 1, 2019. OWNER acknowledges and agrees that if OWNER or NMC Builders has not completed the design and construction of both portions of the Phase 2 Recycled Water System Improvements prior to September 1, 2019, then CITY

shall be entitled to withhold issuance of any further building permits for the Project unless and until the design and construction of both portions of the Phase 2 Recycled Water System Improvements are completed.

4.3.1.4 (Retained without modification)

4.3.1.5 OWNER shall design, or design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure in the Phase 2 area as shown in Exhibit F-R-Phase 2 prior to, and as a condition precedent to, CITY's issuance of any building permits for any Phase 2 Units. Unless otherwise specified in this Amendment, the Subdivision Agreement or Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-2 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for any Phase 2 Units. Additionally, unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 2 area of Exhibit F-R- Phase 2 shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

4.3.1.6 OWNER shall design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure required in the Phase 3 area as shown in Exhibit F-Phase 3, prior to and as a condition precedent to, CITY's issuance of any building permits for any Phase 3 Units. Unless otherwise specified in this Amendment, the Subdivision Agreement or the Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-3 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of any building permits for Phase 3 Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 3 area of Exhibit F-R Phase 3 shall be completed and operational prior to, and as a conditions precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

4.3.1.7 OWNER shall design, construct and complete (or substantially complete in the case of street improvements) all public infrastructure required in the Phase 4 area as shown in Exhibit F-Phase 4/F, prior to and as a condition precedent to, CITY's issuance of any building permits for any Phase 4 Units, including any commercial retail units. Unless otherwise specified in this Amendment, the Subdivision Agreement or the Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-4 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of any building permits for Phase 4 Units, including any commercial retail units. Additionally, unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all

other conditions for each "B" Tract Map in the Phase 4 area of Exhibit F-R- Phase 4F shall be completed and operational prior to, and as a conditions precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

E. Modification to Section 4.3.1 - Completion of Phase 1 Improvements Section 4.3.1.1 shall also be modified to add the following Sections:

4.3.1.1.1 CITY agrees to issue building permits for Production Units in Phase 1, in addition to building permits issued for the Model Units, prior to the required completion of all of the water improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's completion of the water improvements as shown on the revised and modified Exhibit F-R-Phase 1. OWNER agrees that the water improvements in the revised and modified Exhibit F-R- Phase 1 shall include either the construction and completion of water improvements to serve the Phase 1 area including master planned water improvements in Edison Avenue from Archibald Avenue to Turner Avenue or the master planned water improvements in Edison Avenue from Haven Avenue to Milliken Avenue or an alternate point of connection as acceptable to CITY. OWNER also agrees that the revised Phase 1 water improvements shall include the construction and completion of water improvements in Turner Avenue from Edison Avenue to Schaefer Avenue and in Schaefer Avenue to Haven Avenue to provide two connection permanent connection points to the master planned water system as shown on Exhibit F-R- Phase 1. CITY agrees that the master planned water improvements in Haven Avenue from Edison Avenue to Schaefer Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R-Phase 2.

4.3.1.1.2 CITY agrees to issue building permits for Production Units in Phase 1 in addition to building permits issued for Model Units, prior to the required completion of all of the Phase 1 Recycled Water Improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's completion of the Phase 1 Recycled Water improvements as shown on the revised and modified Exhibit F-R-Phase 1. OWNER agrees that the recycled water improvements in the revised and modified Exhibit F-R-Phase 1 shall include the construction and completion of recycled water improvements to serve the Phase 1 area including either master planned water improvements in Schaefer Avenue from Archibald Avenue to Turner Avenue or master planned recycled water improvements in Edison Avenue from Archibald Avenue to Turner Avenue to the extent that such recycled water improvements have not been constructed and completed by NMC Builders or others. OWNER also agrees that the

revised recycle water improvements shall include the construction and completion of all recycled water improvements as shown on Exhibit F-R-Phase 1. CITY agrees that the master planned recycled water improvements in Haven Avenue from Edison Avenue to Schaefer Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R-Phase 2.

4.3.1.1.3 CITY agrees to issue building permits for Production Units in Phase 1 in addition to building permits issued for Model Units, prior to the required completion of all of the Phase 1 sewer improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's completion of the Phase 1 sewer improvements as shown on the revised and modified Exhibit F-R –Phase 1. OWNER agrees that the sewer improvements in the revised and modified Exhibit F-R–Phase 1 shall include the construction and completion of sewer improvements to serve the Phase 1 area including master planned sewer improvements in Edison Avenue from Archibald Avenue to Turner Avenue and all other sewer improvements as shown on Exhibit F-R- Phase 1. CITY agrees that the master planned sewer improvements in Haven Avenue from Schaefer Avenue to Edison Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R-Phase 2.

4.3.1.1.4 CITY's agreement to continue to issue building permits for the Production Units in Phase 1 is also conditioned upon OWNER's strict compliance with the following covenants and conditions precedent:

- i. After CITY's issuance of the first building permit for either Model Units or Production Units for the Project, OWNER shall provide to CITY's City Engineer or his designee, on a periodic basis, not more than each 30 calendar days, a written status report for the completion of the all water, sewer and storm drain improvements as shown on the revised and modified Exhibit F-R-Phase 1. Such status report shall include, at a minimum, the information regarding the current status of all construction projects and the projected completion date for the construction projects.

- ii. After CITY's issuance of the first building permit for either Model Units or Production Units for the Project, OWNER shall provide to CITY's City Engineer or his designee, on a periodic basis, not more than each 30 calendar days, a written report that provides the projected date for OWNER's request to CITY for the release of the utilities and occupancy of the first Production Unit for the Project.

4.3.1.1.5 CITY agrees to issue building permits for Production Units in Phase 1 in addition to building permits issued for Model Units, prior to the required completion of all of the Phase 1 street and circulation system improvements for Phase 1 as shown on Exhibit F-Phase 1 of the Development Agreement. CITY's agreement to issue building permits for Production Units in Phase 1 is conditioned upon OWNER's substantial completion of the street and circulation system improvements as shown on the revised and modified Exhibit F-R –Phase 1. OWNER agrees that the street and circulation system improvements in the revised and modified Exhibit F-R – Phase 1 shall include the construction and substantial completion of street and circulation system improvements to serve the Phase 1 area including street and circulation system improvements for a portion of Edison Avenue and Turner Avenue as shown on the revised and modified Exhibit F-R-Phase 1. CITY agrees that the street and circulation system improvements for Haven Avenue from Edison Avenue to Schaefer Avenue previously shown on Exhibit F-Phase 1 of the Development Agreement shall be deferred to Phase 2 as shown on the revised and modified Exhibit F-R- Phase 2. OWNER also agrees that OWNER shall be responsible for the construction of street and circulation system improvements to serve the Property as shown in the revised and modified Exhibit F-R-Phase 1 and no building permit for Production Units in Phase 1 shall be issued by CITY for the Project prior to the completion of the street and circulation system improvements for the Project. Notwithstanding the above, CITY and OWNER have agreed that if certain street improvements to Edison Avenue as shown on Exhibit F-R-Phase 1 are not substantially complete prior to OWNER's application to CITY for issuance of building permits for Production Units in Phase 1, CITY shall issue up to fifty (50) building permits for Production Units in Phase 1. CITY's agreement to issue building permits for up to a maximum number of fifty (50) Production Unit building permits prior to the substantial completion of the street improvements to Edison Avenue by OWNER, or others, is conditioned upon OWNER's strict compliance with the following covenants and conditions precedent:

- i. OWNER shall have completed (or substantially completed in the case of street improvements) other Phase 1 Improvements as shown on Exhibit F-R-Phase 1, including the connection of all Model Units to permanent master planned facilities for water, sewer, and storm drainage.
- ii. OWNER shall have completed the Phase 1 Recycled Water improvements to provide the permanent connection to permanent master planned recycled water facilities or OWNER shall be in strict compliance with the requirements of Section 3.7.6.1 i, ii, iii and iv, above.
- iii. Owner may engage in marketing and sales activities relating to building permits for the construction of Production Units on individual lots within Phase 1, however, OWNER covenants and agrees that that OWNER shall not enter into any purchase or sales agreements and in no event shall any escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to OWNER's substantial completion of all street improvements to Edison

Avenue required as part of the Phase 1 Improvements as shown on Exhibit F-R Phase 1.

4.3.1.1.6 OWNER and CITY agree that the remaining funds deposited by NMC Builders LLC into the Escrow Account, the "NMC Deposit" to fund, among other things, OWNER's Phase 1 Improvements may not be sufficient to complete the design and construction of OWNER's required improvements. OWNER shall perform all other requirements of the Tract Map conditions for Tract Map 18922 and any other requirements of any Subdivision Agreements, including the provision of performance bonds, as required by CITY. Additionally, if OWNER fails to initiate and/or make reasonable progress or complete construction of the Phase I Improvements as required herein, OWNER shall be considered to be in default of the Development Agreement, and CITY shall have no obligations thereafter to authorize the release of utilities or approve any further certificates of occupancy for Production Units or issue additional building permits."

F. Modification to Section 4.3.3.1 – City Reimbursement for the NMC Portion of the Phase 2 Recycled Water Improvements.

Section 4.3.3.1 shall be amended as follows:

"4.3.3.1 CITY Reimbursement for the NMC Portion of the Phase 2 Recycled Water System Improvements. If OWNER is required to design and construct the NMC Builders portion of the Phase 2 Recycled Water System Improvements, CITY agrees that the provisions of the DIF Credit and Reimbursement Agreement referenced above shall also include a requirement for a special reimbursement from CITY to OWNER upon completion and acceptance by CITY of the NMC Builders portion of the Phase 2 Recycled Water System Improvements. The amount of the reimbursement shall be forty-four percent (44%) of the eligible design and construction costs for the segment of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time the estimated eligible costs for the design and construction of this segment of the NMC Builders portion of the Phase 2 Recycled Water System Improvements is one million, eight hundred thousand dollars (\$1,800,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the NMC Builders portion improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY's DIF Program for the improvements, whichever is less."

G. All remaining Sections of the Development Agreement and the remaining Exhibits thereto, shall not be affected by this First Amendment.

H. Additional Documents/ Actions. The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this First Amendment to the Development Agreement.

I. Defined Terms/Other Provisions. Unless otherwise defined herein, capitalized terms contained in this First Amendment shall have the meanings ascribed to them in the Development Agreement. Except as expressly amended herein, all provisions of the Development Agreement, as supplemented, restated and amended, shall remain.

J. Integration. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Development Agreement, this First Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement as amended. This First Amendment shall be recorded against the Property within 30 calendar days

K. Indemnification. OWNER hereby agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, agents, contractors and volunteers from and against any and all claims, suits or proceedings arising from or related to CITY's entering into, or carrying out, this First Amendment. This indemnification includes the payment of all penalties, fines, judgments, awards, decrees, attorney's fees and related costs or expenses incurred by the CITY.

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

**SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

BROOKCAL ONTARIO LLC

"OWNER"

Brookcal Ontario LLC, a California limited liability company

By: _____

Name:

Title: Authorized Representative

Date: _____

"CITY"

CITY OF ONTARIO

By: _____

Al C. Boling, City Manager

Date: _____

ATTEST:

City Clerk, Ontario
APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

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

APN: 0218-201-42-0-000

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

APN: 0218-201-43-0-000

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

APN: 0218-201-39-0-000

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

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

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

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

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

APN: 0218-201-45-0-000

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

APN:0218-201-30-0-000

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

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT
The Avenue Specific Plan

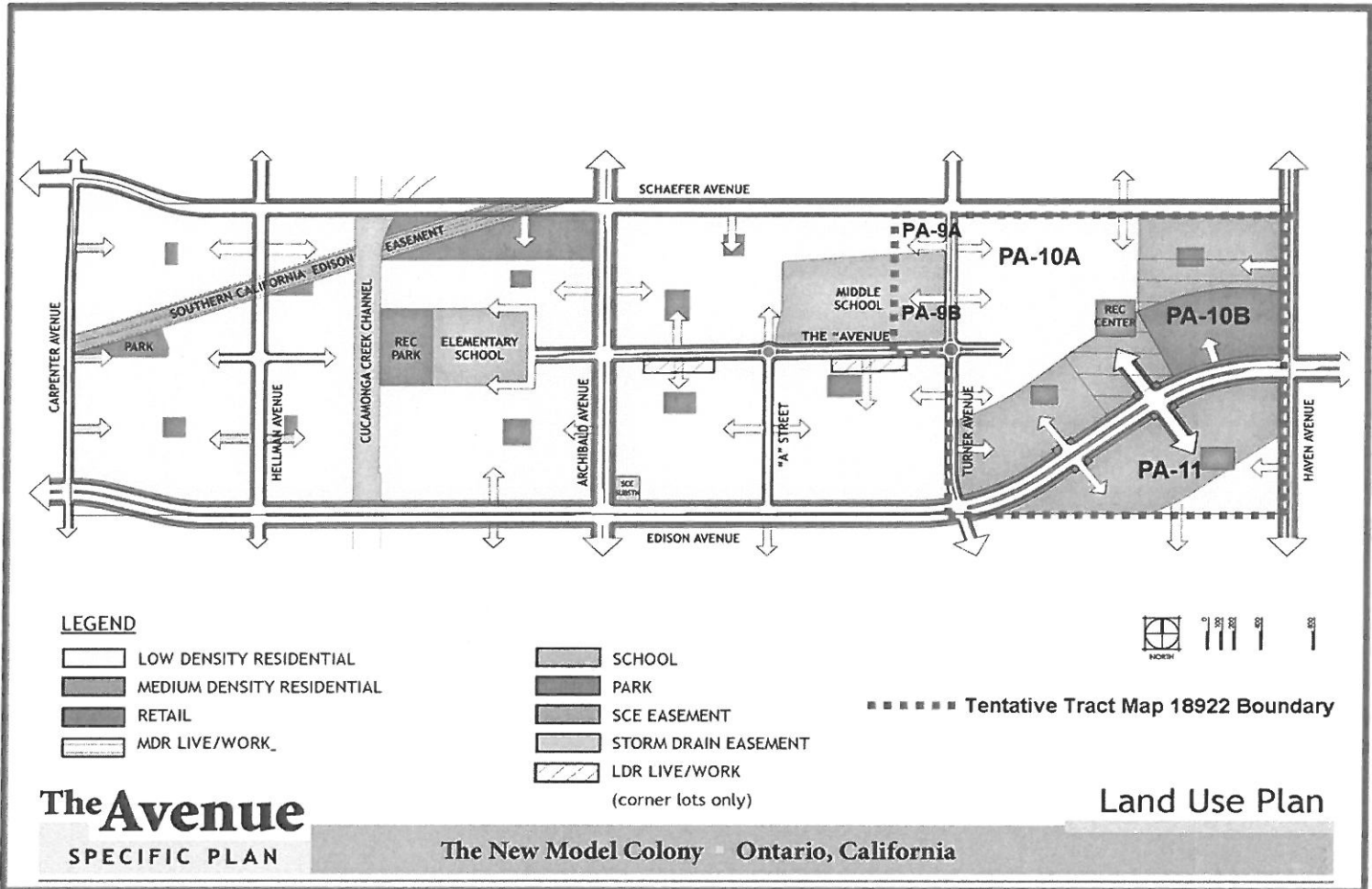


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On November 28, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-141 recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC06-143 recommending City Council approval of The Avenue Specific Plan (PSP05-003).

On December 9, 2006, the City Council:

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

On January 16, 2007, the City Council:

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

On February 2, 2010, the City Council:

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

On April 8, 2014, the Planning Commission:

- a) Adopted Resolution No. PC14-022 recommending City Council approval of the BrookCal Ontario, LLC, Development Agreement File No. PDA10-002
- b) Adopted Resolution No. PC14-023 approving Tentative Tract Map 18922 (Referred to as the "A" Map)

On June 3, 2014 the City Council:

- a) Adopted Ordinance No. 2989 approving the BrookCal Ontario, LLC, and Development Agreement File No. PDA10-002

On August 28, 2014, the Planning Commission:

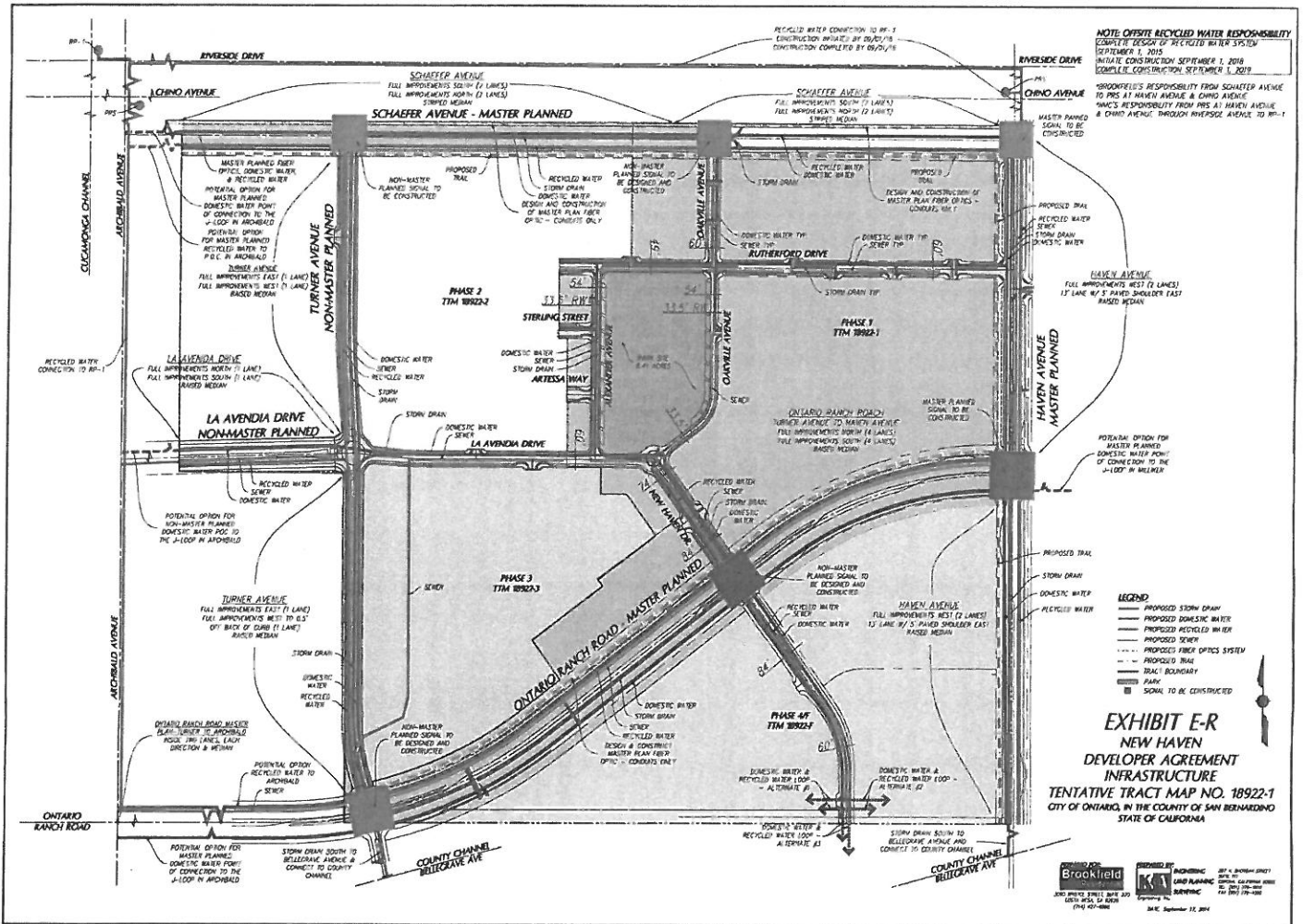
- a) Adopted Resolution No. PC14-078 approving Tentative Tract Map 18991
- b) Adopted Resolution No. PC14-079 approving Tentative Tract Map 18992
- c) Adopted Resolution No. PC14-080 approving Tentative Tract Map 18993
- d) Adopted Resolution No. PC14-081 approving Tentative Tract Map 18994

On June 23, 2015, the Planning Commission:

- a) Adopted Resolution No. PC15-XXX recommending City Council approval of the BrookCal Ontario, LLC, Development Agreement Amendment File No. PDA15-002

Exhibits E-R TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements

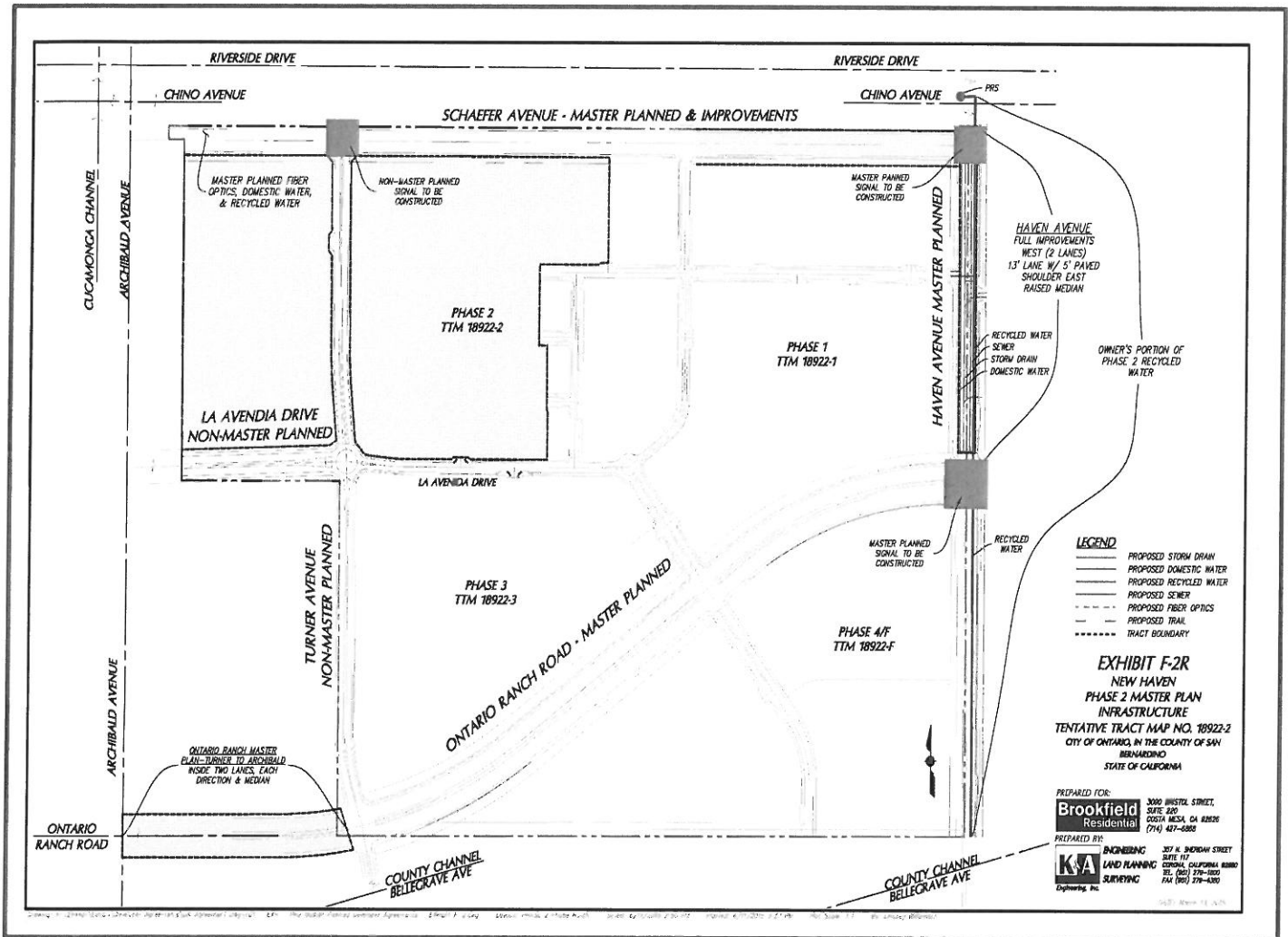


Phase 1 Master Plan Required Infrastructure Improvements



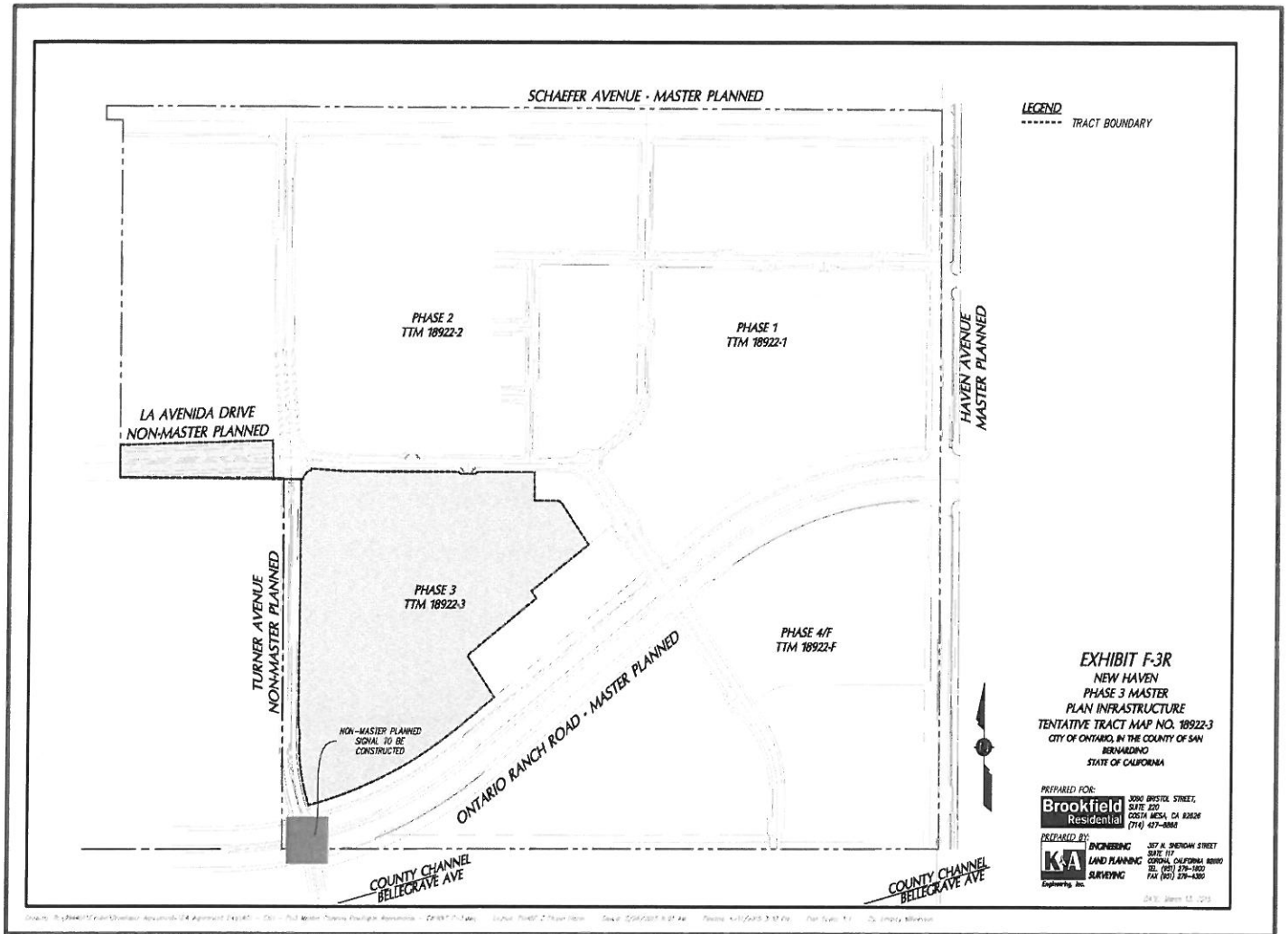
Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 2 Master Plan Required Infrastructure Improvements



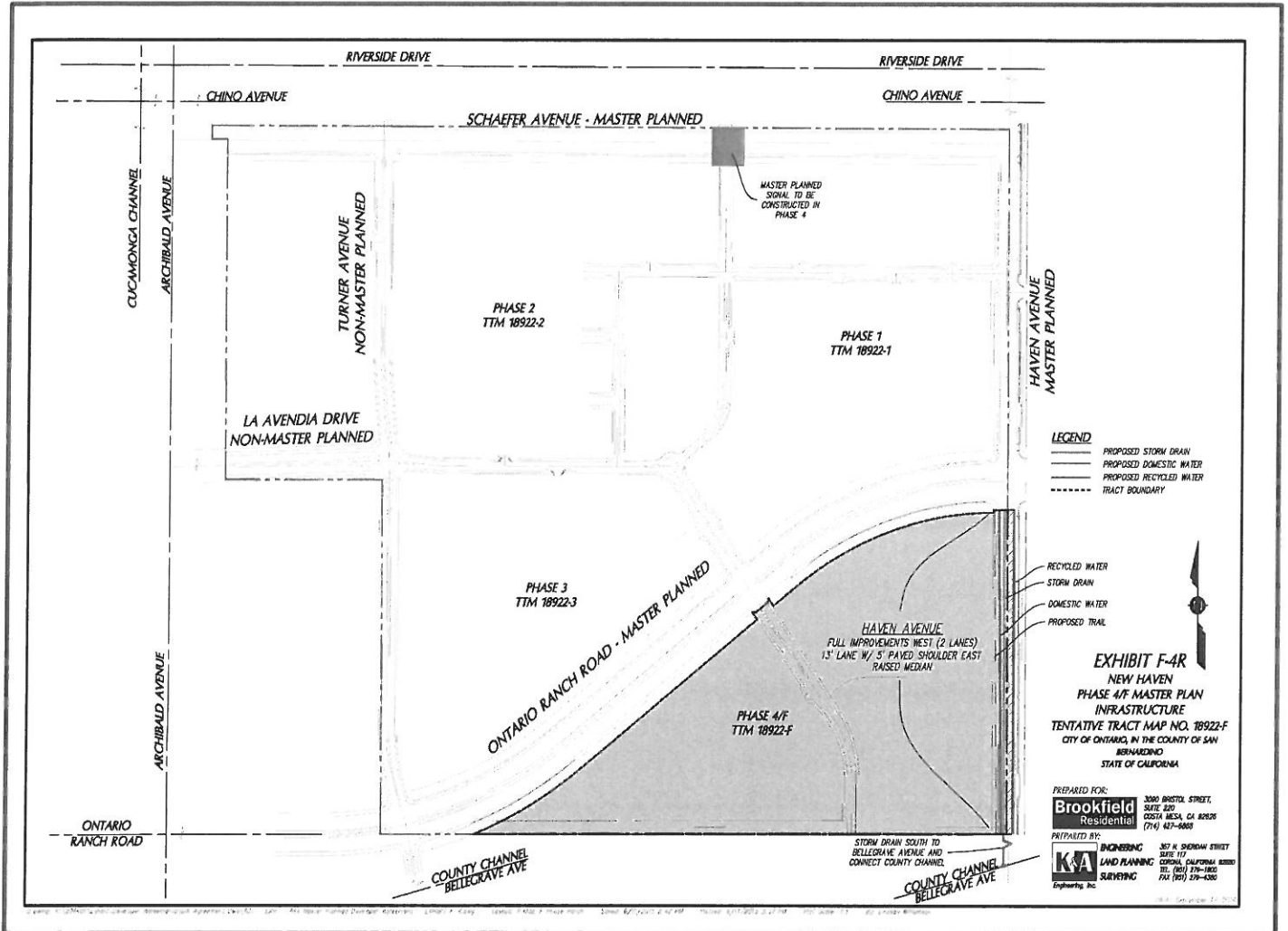
Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 3 Master Plan Required Infrastructure Improvements



Exhibits F-R TO DEVELOPMENT AGREEMENT

Phase 4 Master Plan Required Infrastructure Improvements



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-002) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO UPDATE CERTAIN INFRASTRUCTURE PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT (FILE NO. PDA10-002) FOR THE DEVELOPMENT OF UP TO 1,146 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL ON 178.66 ACRES OF LAND WITHIN PLANNING AREAS 9A, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE (ONTARIO RANCH ROAD), BETWEEN TURNER AVENUE AND HAVEN AVENUE AND MAKING FINDINGS IN SUPPORT THEREOF. (APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 AND 0218-201-45).

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

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

WHEREAS, attached to this Ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between BrookCal Ontario, LLC, and the City of Ontario, File No. PDA15-002. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Amendment”; and

WHEREAS, on December 9, 2006, the City Council of the City of Ontario certified The Avenue Specific Plan EIR (SCH #2005071109); and

WHEREAS, on January 16, 2007, the City Council of the City of Ontario adopted Ordinance No. 2851 approving The Avenue Specific Plan; and

WHEREAS, on June 23, 2015, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted unanimously (7-0) to recommend approval of the Amendment to the Development Agreement to the City Council; and

WHEREAS, as the environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on July 21, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Amendment to the Development Agreement and concluded said hearing on that date; and

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

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

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on July 21, 2015, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Amendment to the Development Agreement applies to 178.66 acres of land within (Tract Map 18922) Planning Areas 9A, 10A, 10B and 11 of The Avenue Specific Plan, generally located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue and is presently vacant; and

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

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

c. The Amendment to the Development Agreement consist of modifications to Sections 1.2 Exhibits, Section 3.7.6, and Sections 4.31, including Section 4.3.1.1 through 4.3.1.7 to the Development Agreement as follows:

Section 3.7.6 Recycled Water – Modifications to Phase 1 and Phase 2 of the Recycled Water Improvements to:

- Amended Phase 1 recycled water improvements to allow the construction of recycled water lines in either Ontario Ranch Road (Edison Avenue) or Schafer Avenue from Archibald Avenue to Haven Avenue to serve the Property or another point of connection acceptable to City to serve the Property.
- Allow for a “Well Use Agreement.” The Well Use Agreement will provide for the use of agricultural well water, in-lieu of recycled water, to serve up to the first 100 production units until the full completion of the Phase I recycled water improvements by owner, subject to the following conditions:

1. The processing of Well Use Agreement Amendment;
 2. A 30 day status report on the completion of permanent recycled water improvements;
 3. The requirement of a bond or deposit for operation and future abandonment of the agriculture well; and
 4. The completion of Phase 1 permanent recycled water improvements and the abandonment the agriculture well prior to issuance of 100th building permit.
- Amend Phase 2 of the recycled water requirements to divide improvements into “owner’s portion” of Phase 2 recycled water improvements and the “NMC portion” of Phase 2 recycled water improvements. The owner’s portion consists of recycled water line in Haven Avenue from Schaeffer Avenue north to the pressure reduction station at Chino Avenue and in Haven Avenue from Ontario Ranch Road south to south Project limits of Phase 4F (Old Edison Avenue) and subject to:
 1. Owner’s portion of Phase 2 recycled water design shall be completed by September 1, 2015;
 2. A deposit from NMC Builders will be required for Phase 2 prior September 1, 2018;
 3. Owner to initiate construction of owner’s portion of Phase 2 recycled water prior to September 1, 2018, and complete construction by September 1, 2019; and
 4. NMC Builders to initiate construction of Phase 2 recycled water improvements by September 1, 2018, and complete Phase 2 by September 1, 2019. If NMC Builders fail to construct Phase 2, then owner shall construct improvements.

Section 4.3.1, including Sections 4.3.1.1, through 4.3.1.7 Public Improvements - Phase 1 circulation is dependent on the completion of Ontario Ranch Road from Milliken Avenue to the project site. The City agrees to issue up to 50 building permits for production units prior to the completion of Ontario Ranch Road, subject to:

- Phase 1 completion of infrastructure improvements (water, sewer and storm drain);
 - Owner agrees not to enter into any purchase/sales agreement and in no event shall escrow(s) for the sale of any individual lot(s) within Phase 1 be opened prior to the Owner’s substantial completion of all required street improvements to Ontario Ranch Road as part of the Phase 1 improvements as shown on Exhibit F-R Phase 1; and
- d. The Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

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

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

g. The Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously analyzed in an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that was adopted by the City Council on June 17, 2014. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 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. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

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

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)