

**CITY OF ONTARIO  
CITY COUNCIL AND HOUSING AUTHORITY  
AGENDA  
SEPTEMBER 2, 2014**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Paul Vincent Avila**  
Council Member



**Al C. Boling**  
City Manager

**John E. Brown**  
City Attorney

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

**James R. Milhiser**  
Treasurer

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

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

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

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

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

**6:00 p.m.**

***ROLL CALL***

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

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

***CLOSED SESSION***

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One case*
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: APN 0238-152-07, 2175 South Milliken Avenue; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Steve Brown; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

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

***PLEDGE OF ALLEGIANCE***

Council Member Avila

**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. BILLS/PAYROLL**

**Bills** July 13, 2014 through July 26, 2014 and **Payroll** July 13, 2014 through July 26, 2014, when audited by the Finance Committee.

**2. A RESOLUTION AMENDING THE CITY COUNCIL MEETING DECORUM EXPECTATIONS, RULES OF CONDUCT AND ASSOCIATED CONSEQUENCES**

That the City Council adopt a resolution amending the City Council meeting decorum expectations, Rules of Conduct and associated consequences for City Council Members not adhering to decorum expectations.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE RULES GOVERNING THE CONDUCT OF CITY COUNCIL MEETINGS AND RESCINDING PREVIOUS RESOLUTION NO. 2014-079.

**3. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE I); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS**

That the City Council:

- (A) Accept a written petition (on file with the Records Management Department) from KB Home Coastal Inc., located in Wildomar, CA, to create a Community Facilities District (CFD), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I); authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, October 7, 2014; and
- (C) Adopt a Resolution to incur bonded indebtedness of proposed Community Facilities District No. 24 (Park Place Facilities - Phase I).

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

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES – PHASE I).

**4. AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN GENSTAR DEVELOPMENT CORPORATION INVESTMENTS 6, L.P., AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO CONFORM WITH THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS**

That the City Council consider and adopt an ordinance approving an amendment (File No. PDA14-003) to the Development Agreement between Genstar Development Corporation Investments 6, L.P., a Delaware Limited Partnership, and the City of Ontario to update certain provisions of the existing Development Agreement and to conform with the Construction Agreement Amendment with NMC Builders, LLC of Ontario, California, to update certain provisions of the existing Development Agreement (File No. PDA06-002), and to provide for phasing of the construction of public infrastructure.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION INVESTMENTS 6, L.P., (ESPERANZA SPECIFIC PLAN) (FILE NO. PDA14-003) TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT (FILE NO. PDA06-002) TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 17931, 17932, 17933, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-332-12 and 0218-252-16).

**5. AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN GENSTAR DEVELOPMENT CORPORATION INVESTMENTS – RCCD, L.P., AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS**

That the City Council consider and adopt an ordinance approving an amendment (File No. PDA14-004) to the Development Agreement between Genstar Development Corporation Investments – RCCD, L.P., a Delaware Limited Partnership, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC of Ontario, California, and update certain provisions of the existing Development Agreement (File No. PDA06-003).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION – RCCD L.P., (ESPERANZA SPECIFIC PLAN) (FILE NO. PDA14-004) TO AMEND DEVELOPMENT AGREEMENT, FILE NO. PDA06-003, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS, TO INCLUDE THE ADDITIONAL DEVELOPMENT OF UP TO 217 RESIDENTIAL UNITS ON 27.23 ACRES OF LAND, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 17935, 17936, 18876, AND 18778, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-332-11 and 0218-252-17).

**6. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, THE ANKER FAMILY DECEDENT'S TRUST, AND NEW CINGULAR WIRELESS PCS, LLC, FOR THE CONTINUED USE OF A TELECOMMUNICATIONS FACILITY**

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA14-005), which allows for the continued use of an existing telecommunications facility located at 13524 South Grove Avenue (APN: 1052-481-02) within the future right-of-way of Grove Avenue; and establishing standards for its future removal/relocation.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA14-005, A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, A CALIFORNIA MUNICIPAL CORPORATION, THE ANKER FAMILY DECEDENT'S TRUST, AND NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE FUTURE REMOVAL/RELOCATION OF TELECOMMUNICATION EQUIPMENT FROM THE CURRENT/FUTURE RIGHT-OF-WAY OF GROVE AVENUE IN CONJUNCTION WITH A DEVELOPMENT PLAN (FILE NO. PDEV13-009), CONDITIONAL USE PERMIT (FILE NO. PCUP13-003), AND VARIANCE (FILE NO. PVAR13-004) TO ALLOW THE CONTINUED USE OF A 65-FOOT TALL MONOPOLE TELECOMMUNICATIONS FACILITY AT 13524 SOUTH GROVE AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1052-481-02.

**7. A RESOLUTION TO ADOPT THE REVISIONS TO THE CITY OF ONTARIO LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

That the City Council adopt a resolution approving the 2014 revisions to the City of Ontario Local Guidelines for Implementing the California Environmental Quality Act (on file in the Records Management Department).

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 ET SEQ.).

**PUBLIC HEARINGS**

**8. A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 6 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO SEVENTY-TWO HOUR PARKING LIMITATIONS**

That the City Council introduce and waive further reading of an ordinance amending Chapter 6 of Title 4 of the Ontario Municipal Code pertaining to seventy-two hour parking limitations in city-owned parking lots and facilities.

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

Written communication.

Oral presentation.

Public hearing closed.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 6 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATED TO SEVENTY-TWO (72) HOUR PARKING LIMITATIONS.

**ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**

**CITY ATTORNEY REPORT ON INVESTIGATION OF COUNCIL MEMBER ACTIONS**

## **STAFF MATTERS**

City Manager Boling

## **COUNCIL MATTERS**

### ***CITY COUNCIL RULES OF CONDUCT – CONSIDERATION OF SANCTIONS***

### ***MAYOR PRO TEM WAPNER’S REQUEST FOR COUNSEL***

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

## **ADJOURNMENT**



**CITY OF ONTARIO  
CLOSED SESSION REPORT**  
City Council // Housing Authority // Other // (GC 54957.1)  
**September 2, 2014**

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

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

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

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:  
*One case*

**No Reportable Action      Continue      Approved**

/ /                      / /                      / /

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: APN 0238-152-07, 2175 South Milliken Avenue; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Steve Brown; Under negotiation: Price and terms of payment.

**No Reportable Action      Continue      Approved**

/ /                      / /                      / /

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

**CITY OF ONTARIO  
CLOSED SESSION REPORT**  
City Council // Housing Authority // Other // (GC 54957.1)  
**September 2, 2014**  
(Continued)

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

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

No Reportable Action	Continue	Approved
/ /	/ /	/ /

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

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

# **CITY OF ONTARIO**

## *Agenda Report*

**September 2, 2014**

## **SECTION: CONSENT CALENDAR**

**SUBJECT: A RESOLUTION AMENDING THE CITY COUNCIL MEETING DECORUM EXPECTATIONS, RULES OF CONDUCT AND ASSOCIATED CONSEQUENCES**

**RECOMMENDATION:** That the City Council adopt a resolution amending the City Council meeting decorum expectations, Rules of Conduct and associated consequences for City Council Members not adhering to decorum expectations.

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

**FISCAL IMPACT:** None.

**BACKGROUND:** On June 3, 2014, the City Council directed staff to work with the City Attorney's Office to review existing practices and policies regarding City Council decorum, code of conduct, censure protocols and sanction options. At the July 1, 2014 City Council meeting, staff presented the City Council a compilation of documents to assist the City Council in the following: understanding the then-existing "Rules of Conduct for Members of the City Council"; developing possible amendments to said rules; and determine consequences and courses of action for City Council Members not adhering to said rules. The City Council established a sub-committee to review the documents.

On July 15, 2014, the City Council adopted Resolution No. 2014-079, which established the City Council Rules of Conduct. However, the Rules of Conduct included language which inadvertently regulated the conduct of members of the public in an impermissible manner. As a result, the City Attorney's Office proposes that the Rules of Conduct be amended to remove the subject language. The amendment does not affect any other aspect of the Rules of Conduct, including the application of said rules to City Council Members.

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

Prepared by: John E. Brown  
Department: City Attorney

City Manager  
Approval: 

Submitted to Council/O.H.A. 09/02/2014

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

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

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE RULES GOVERNING THE CONDUCT OF CITY COUNCIL MEETINGS AND RESCINDING PREVIOUS RESOLUTION NO. 2014-079.

WHEREAS, the City Council adopted Resolution No. 2014-079 on July 15, 2014 setting the Rules of Conduct of City Council meetings; and

WHEREAS, the City Council desires to amend the way in which the Rules of Conduct apply to members of the public.

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

SECTION 1. The City Council hereby amends the Rules of Conduct of City Council meetings, originally adopted through Resolution No. 2014-079, as set forth in the attached document.

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Resolution, the attached Rules of Conduct, or any part thereof is for any reason held to unconstitutional, such decision shall not affect the validity of the remaining portion of this resolution or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

SECTION 3. Previous Resolution No. 2014-079 is hereby rescinded to the extent it is inconsistent with the provisions of this resolution.

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

PASSED, APPROVED, AND ADOPTED this 2<sup>nd</sup> day of September 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 2, 2014 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-        duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014.

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

(SEAL)

# City of Ontario

## City Council Rules of Conduct



Adopted July 15, 2014 (Resolution No. 14-079)

Amended September 2, 2014 (Resolution No. 14-XX)



# City Council Rules of Conduct

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# City Council Rules of Conduct

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## **POLICY**

The Ontario City Council is committed to conducting the City's business in a fair, responsible, and impartial manner; that all governmental policies be made in the proper channels of the government structure; and that the public have confidence in the integrity of its government. Therefore, the following Rules of Conduct shall be observed by each City Council Member.

## **CITY MANAGER FORM OF GOVERNMENT**

These Rules of Conduct affirm the City Manager form of government. As stated in Article 1 of Chapter 3 of the Ontario Municipal Code, the City Manager is the administrative head of the City government. All City staff are under the direct management and control of the City Manager. Staff is directed to report to the City Manager any attempts by individual members of the City Council to influence or otherwise pressure them into making, changing or suppressing staff decisions or recommendations.

The City Manager shall serve as the central point of contact by which Council Members can direct complaints, suggestions and information directly and quickly. It is important that all such matters be handled promptly through the City Manager's Office for the satisfaction of the City Council Members and their constituents.

## **REPRESENTING THE CITY**

Except where specifically authorized by City Council action or for purely ceremonial purposes, no Council Member shall make any statement or appearance or indicate in any way that he or she is representing the City on any action, decision, or policy direction. Individual Council Members shall not insert themselves into or take positions on matters which will or are likely to be the subject of public hearings or City Council deliberations and actions.

## **NON-DISCLOSURE OF CONFIDENTIAL MATTERS**

From time to time, matters come before the City Council which shall be kept confidential: such as employee discipline, the prosecution and defense of potential or pending



# City Council Rules of Conduct

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legal matters, salary negotiations, and matters properly handled in closed session meetings. Council Members shall not disclose such information to others.

## **CITY COUNCIL APPOINTMENTS**

Unless otherwise provided by law, ordinance, resolution, or City Council action, all City commissioners and committee members shall be appointed by majority vote of the City Council as outlined in Ontario Municipal Code Section 2-2.101.

## **CITY COUNCIL MEETINGS**

- A. City Council meetings are for the orderly conduct of City business.
- B. The City Council shall, from time to time and by majority vote, establish the City Council meeting format as to time for public hearings, public comments, time limits for speakers, and time limits for City Council comments, all toward the goal of preventing unnecessarily long City Council meetings.
- C. After legal notice has been given, closed sessions of the City Council shall be conducted at 6:00 p.m. preceding the regular City Council meeting, or preceding a legally noticed Special City Council meeting.
- D. The City Council shall make an effort to conclude each City Council meeting by 10:00 p.m. If it appears that all items cannot be considered within that time period, the City Council may, by majority vote, either continue hearing such agenda item or continue such item to the next regular City Council meeting, special City Council meeting or an adjourned City Council meeting.
- E. Items shall be placed on the City Council agenda by the following persons:
  - i. Mayor;
  - ii. Majority of City Council;
  - iii. City Manager; and
  - iv. City Attorney (as to legal matters only).
- F. The consent calendar shall be reserved for matters of a non-controversial nature which have been fully disclosed to the Council Members. The City Council and staff shall make every effort to ensure that the consent calendar is promptly acted upon.



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- G. In order to ensure that all members of the public have an opportunity to speak and that the City Council is able to complete its business within the prescribed time frame, there will be a three (3) minute limitation on comments by the public, unless otherwise prohibited by law or additional time is required to adequately present a matter before the City Council or the City Council establishes a different time limitation. The three (3) minute time limitation for each speaker will be monitored by the City Clerk and enforced by the Mayor or Chair. In accordance with State law, during the public comment period the City Council should refrain from responses, debate, or action on non-agendized matters.
- H. All written informational material requested by individual Council Members shall be submitted by City staff to all Council Members with a notation indicating which Council Member requested the information. Where such written material relates to a City Council agenda item, Council Members will be provided such material at least three (3) days prior to the City Council meeting. All written responses to City Council shall be provided by the City Manager or his/her designee.
- I. Any Council Member desiring to speak shall address the Mayor, and upon recognition by the Mayor, shall confine himself/herself to the question under debate.
- J. A Council Member desiring to question a staff member shall address his/her question to the City Manager, City Attorney, or the City Clerk in appropriate cases, who shall be entitled to answer the inquiry himself/herself or to designate a staff member for that purpose.
- K. A Council Member, once recognized, shall not be interrupted while speaking unless called to order by the Mayor; unless a Point of Order is raised by another Council Member; or unless the speaker chooses to yield to questions from another Council Member.
- L. Any Council Member challenged while speaking, shall cease speaking immediately until the question of order is determined. If ruled to be in order, he/she shall be permitted to proceed. If ruled to be not in order, he/she shall remain silent or shall alter his/her remarks so as to comply with rules of the City Council.



# City Council Rules of Conduct

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- M. After each individual City Council Member has addressed a matter and after the closing of a public hearing, if applicable, the City Council, by majority vote, may close further City Council debate and call for a vote on any related matters.
- N. Council Members shall accord the utmost courtesy to each other, to City employees and to the public appearing before the City Council, and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments, and statements as to motives and personalities.

## **DECORUM AND ORDER OF CITY COUNCIL**

- A. Individual Council Members shall not direct the City Manager; such direction shall be made by the majority of the City Council.
- B. Council Members shall not direct City staff in the performance of any work without approval of the City Manager.
- C. Council Members shall never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance shall only be made to the City Manager through private correspondence or conversation.
- D. Council Members must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.
- E. Council Members shall not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.
- F. It is inappropriate for a Council Member to contact a commission or committee member to lobby on behalf of an individual, business, or developer, and vice versa. Commissions and committees serve the community, not individual Council Members. The City Council appoints individuals to serve on commissions and committees, and it is the responsibility of commissions and committees to follow policy established by the City Council.



# City Council Rules of Conduct

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- G. Commission and committee members do not report to individual Council Members, nor shall Council Members feel they have the power or right to threaten commission and committee members with removal if they disagree about an issue. Appointment and re-appointment to a commission or committee shall be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A commission or committee appointment shall not be used as a political reward.
- H. Commission and committee members may offer political support to a Council Member, but not in a public forum while conducting official duties. Conversely, Council Members may support commission and committee members who are running for office, but not in an official forum in their capacity as a Council Member.
- I. Council Members who fail to follow proper conduct as determined by the City Council may be reprimanded or formally censured by the City Council, lose seniority or committee assignments (both within the City of Ontario or with inter-government agencies) or have official travel restricted. Infractions of the Rules of Conduct could lead to other sanctions as deemed appropriate by a majority vote of the City Council.

## **DECORUM AND ORDER OF THE PUBLIC**

- A. Each person who addresses the City Council from the podium shall do so in an orderly manner and shall not make personal, slanderous, or profane remarks to any member of the City Council, staff, or the general public. Any person who makes such remarks, or who utters loud, threatening, personal, or abusive language, or engages in any other disorderly conduct which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting, whether from the podium or in the audience, may, at the discretion of the Mayor, be escorted from the Council Chambers and barred from further audience before the City Council during that meeting.

## **SANCTIONS AND PROCEDURES FOR VIOLATIONS OF RULES OF CONDUCT**

- A. Council Members who fail to observe these Rules of Conduct, or violate any State or Federal law, or any City ordinance or policy, may be reprimanded or formally censured, lose seniority or committee assignments (both within the City of Ontario or with



## City Council Rules of Conduct

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inter-government agencies), have official travel restricted or be ordered to attend City Council meetings, if the Council Member is absent without justification. Infractions of these Rules of Conduct could lead to other sanctions as deemed appropriate by the City Council, including, but not limited to, referral to the San Bernardino County District Attorney and/or Civil Grand Jury if the conduct is egregious or allegedly criminal in nature. Council Members should point out to the offending Council Member any perceived infraction of these Rules of Conduct as it occurs. No Council Member shall be reprimanded, sanctioned or censured for the exercise of his or her First Amendment rights. However, nothing herein shall be construed to prohibit the City Council from individually or collectively condemning or expressing disapproval of behavior in violation of these rules.

- B. It is the responsibility of the Mayor to initiate formal action if a Council Member's behavior may warrant reprimand, sanction or censure. If no action is taken by the Mayor, action on the alleged violation may be placed on a future agenda for consideration by a majority vote of the City Council.
- C. Reprimand is the least severe form of action for a violation of these rules and may be issued by majority vote of the City Council without findings of fact or investigation. Reprimand is not considered a sanction or censure.
- D. Formal censure, loss of seniority, committee assignments, travel restrictions, or other sanctions deemed appropriate by the City Council may be requested by any Council Member in writing submitted to the Mayor. The written request must set forth specific allegations of violations of State or Federal law, or City ordinances or policies, including these Rules of Conduct, upon which the proposed sanction is based. If the Mayor determines that the request for censure or sanction warrants City Council consideration, the request shall be scheduled for consideration by the City Council at the next regularly scheduled City Council meeting. If a majority of the City Council wishes to take action on the request for sanction or censure, the request shall be agendized for a public City Council meeting. The Mayor, or the most senior Council Member, if the Mayor is the subject of the sanction request, shall preside over the proceedings. The rules of evidence shall not apply. A decision to censure or impose other sanctions with



# City Council Rules of Conduct

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respect to the specific charges, based on substantial evidence, requires a majority vote of the City Council.

## **IMPLEMENTATION**

As an expression of the standards of conduct and decorum for Council Members expected by the City, the City of Ontario Rules of Conduct is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions. For this reason, this document shall be included in the regular orientations for newly elected and appointed City Council Members. Members entering office are urged to sign the attached statement affirming they received, read, understood, and shall abide by the City of Ontario Rules of Conduct. The City Council shall consider recommendations to update the Rules of Conduct as necessary.

## City Council Rules of Conduct

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I, \_\_\_\_\_, City Council Member of the City of Ontario, DO HEREBY AFFIRM that I have received, read, understood, and shall abide by the City Council Rules of Conduct.



\_\_\_\_\_  
CITY COUNCIL MEMBER SIGNATURE

ATTEST:

\_\_\_\_\_  
CITY OF ONTARIO, CITY CLERK



# **CITY OF ONTARIO**

*Agenda Report*  
**September 2, 2014**

## **SECTION: CONSENT CALENDAR**

**SUBJECT: ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE I); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS**

**RECOMMENDATION:** That the City Council:

- (A) Accept a written petition (on file with the Records Management Department) from KB Home Coastal Inc., located in Wildomar, CA, to create a Community Facilities District (CFD), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I); authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, October 7, 2014; and
- (C) Adopt a Resolution to incur bonded indebtedness of proposed Community Facilities District No. 24 (Park Place Facilities - Phase I).

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

**FISCAL IMPACT:** The use of Mello-Roos financing for facilities in the residential development of the Park Place Facilities – Phase I project is estimated to generate approximately \$14 million, which will be used to help fund a portion of the public infrastructure improvements that will serve the project.

**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. 09/02/2014

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

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

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

**3**

Since Mello-Roos bonds are not a direct obligation of the City, and are paid from special taxes levied on each taxable parcel in the district, there is no general fund impact from the issuance of Mello-Roos bonds.

**BACKGROUND:** The Mello-Roos Community Facilities Act of 1982 provided local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public infrastructure facilities. With the adoption of Resolution 2014-003 on February 4, 2014, the City Council authorized the levy of special taxes to fund various city services for the district. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting resolutions declaring the City's intention to establish a community facilities district and levy special taxes, and to issue bonds.

In the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony ("First Amended and Restated Construction Agreement") between the City and NMC Builders, LLC, the city agreed to cooperate with the members of NMC Builders, LLC in the formation of community facilities districts. KB Home Coastal Inc., an assignee homebuilder of SL Ontario Development Company, LLC - a member of NMC Builders, LLC - has provided a written petition to the City requesting formation of a community facilities district for the Park Place Facilities - Phase I project in the New Model Colony. The Park Place Facilities - Phase I project addresses the development of approximately 72 acres located East of Archibald Avenue, generally west of Haven Avenue, generally south of Merrill Avenue and north of Bellegrave Avenue. At build out, the development is projected to include 432 single family units.

Included, as part of the resolution of intention for the proposed district, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos Local Goals and Policies in all aspects, except that the percentage of assessed value of the total annual tax obligation plus the Homeowners Association (HOA) fee exceeds the adopted policy threshold by up to .09%. The policy threshold for the percentage of assessed value of the total annual tax obligation plus the HOA fee is 2.15%. In aggregate, as proposed, the percentage of assessed value of the total annual tax obligation plus the HOA fee is 2.24%. However, it is recommended that the policy threshold limitation be waived in this instance due to the enhanced level of HOA amenities and services to be provided to the residents of the Park Place project.

Under the proposed Rate and Method of Apportionment, **the portion of the maximum annual special tax rates which will be used to fund debt service payments on the bonds is fixed and will not increase over time.** The amount of bonds authorized (\$57 million) under the resolution is set intentionally higher than the current proposed bond amount (approximately \$14 million) in order to allow future City Councils the option, without increasing the amount of the annual special taxes, to issue additional bonds to replace and/or construct new public infrastructure improvements in the future, or to fund City services. The formation of Community Facilities District No. 24 (Park Place Facilities - Phase I) is the first of many anticipated New Model Colony community facilities districts that will be coming before the City Council for approval in the future. It is intended that the term and structure of the Rate and Method of Apportionment of Special Tax for Park Place Facilities - Phase I will serve as the template for future proposed residential community facilities districts. This will ensure that the special tax rates levied on all residential property owners in community facilities districts in the New Model

Colony be developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in New Model Colony community facilities districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

City staff have presented and discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners. As proposed, the resolution of intention to establish the district and to levy special taxes will set the public hearing date on the formation of the CFD for the regularly scheduled City Council meeting on Tuesday, October 7, 2014 to consider the matter.

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

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

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

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

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

WHEREAS, the Landowner has represented and warranted to the City Council that the Landowner is the owner of not less than 10% of the area of land proposed to be included within the Community Facilities District; and

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district; and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative

body, with or without interest, under all the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, the City and SL Ontario Development Company, LLC ("SL Ontario") entered into a Deposit and Reimbursement Agreement, dated as of September 1, 2014 (the "Deposit Agreement"), that provides for the advancement of funds by SL Ontario to be used to pay costs incurred in connection with the establishment of the Community Facilities District and the issuance of special tax bonds thereby, and provides for the reimbursement to SL Ontario of such funds advanced, without interest, from the proceeds of any such bonds issued by the Community Facilities District; and

WHEREAS, the City desires to include in this Resolution, in accordance with Section 53314.9 of the Act, the proposal to repay funds pursuant to the Deposit Agreement.

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

SECTION 1. THE City Council hereby finds that the Petition is signed by the requisite number of owners of land proposed to be included in the Community Facilities District.

SECTION 2. The City Council proposes to establish a community facilities district under the terms of the Act. The boundaries of the territory proposed for inclusion in the Community Facilities District are described in the map showing the proposed Community Facilities District (the "Boundary Map") on file with the City Clerk of the City (the "City Clerk"), which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to sign the original Boundary Map and record, or cause to be recorded, the Boundary Map with all proper endorsements thereon in the office of the San Bernardino County Recorder within 15 days of the date of adoption of this Resolution, all as required by Section 3111 of the California Streets and Highways Code.

SECTION 3. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I)".

SECTION 4. The public facilities (the "Facilities") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption

“Facilities” on Exhibit A hereto, which is by this reference incorporated herein. Those Facilities proposed to be purchased as completed public facilities are described under the caption “Facilities to be Purchased” on Exhibit A hereto. The services (the “Services”) proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption “Services” on Exhibit A hereto. The incidental expenses proposed to be incurred are identified under the caption “Incidental Expenses” on Exhibit A hereto. All or any portion of the Facilities may be financed through a financing plan, including, but not limited to, a lease, lease-purchase or installment-purchase arrangement.

SECTION 5. Except where funds are otherwise available, a special tax sufficient to pay for all Facilities and Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District, will be annually levied within the Community Facilities District. The rate and method of apportionment of the special tax (the “Rate and Method”), in sufficient detail to allow each landowner within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is described in Exhibit B attached hereto, which is by this reference incorporated herein. The conditions under which the obligation to pay the special tax to pay for Facilities may be prepaid and permanently satisfied are specified in the Rate and Method. The special tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

SECTION 6. The special tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created.

SECTION 7. The tax year after which no further special tax to pay for Facilities will be levied against any parcel used for private residential purposes is specified in the Rate and Method. Under no circumstances shall the special tax to pay for Facilities in any fiscal year against any parcel used for private residential purposes be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the Community Facilities District by more than 10% above the amount that would have been levied in that fiscal year had there never been any such delinquencies or defaults. For purposes of this paragraph, a parcel shall be considered “used for private residential purposes” not later than the date on which an occupancy permit for private residential use is issued.

SECTION 8. Pursuant to Section 53344.1 of the Act, the City Council hereby reserves to itself the right and authority to allow any interested owner of property within the Community Facilities District, subject to the provisions of said Section 53344.1 and to those conditions as it may impose, and any applicable prepayment penalties as prescribed in the bond indenture or comparable instrument or document, to tender to the Community Facilities District treasurer in full payment or part payment of any

installment of the special taxes or the interest or penalties thereon which may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender.

SECTION 9. The City Council hereby fixes Tuesday, October 7, 2014, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District.

SECTION 10. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53322 of the Act.

SECTION 11. The levy of said proposed special tax shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the Community Facilities District, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 12. Each officer of the City who is or will be responsible for providing one or more of the proposed types of Facilities or Services is hereby directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the Facilities and Services by type which will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing the Facilities and Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the Facilities proposed to be purchased as completed public facilities and of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 13. SL Ontario has heretofore advanced certain funds, and may advance additional funds, which have been or may be used to pay costs incurred in connection with the establishment of the Community Facilities District and the issuance of special tax bonds thereby. The City Council proposes to repay all or a portion of such funds expended for such purpose, solely from the proceeds of such bonds, pursuant to the Deposit Agreement. The Deposit Agreement is hereby incorporated herein as though set forth in full herein.

SECTION 14. 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 15. This Resolution shall take effect immediately upon its adoption.

SECTION 16. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2<sup>nd</sup> day of September 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY



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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 2, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-     duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014.

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

(SEAL)

## EXHIBIT A

### FACILITIES AND INCIDENTAL EXPENSES

#### Facilities

The types of facilities to be financed by the Community Facilities District are street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities, solid waste facilities, storm drainage facilities, park and recreation facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication system facilities, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any of such facilities.

#### Facilities to be Purchased

The types of facilities to be purchased as completed facilities are street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities, solid waste facilities, storm drainage facilities, park and recreation facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication system facilities, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any of such facilities.

#### Services

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

#### Incidental Expenses

The incidental expenses proposed to be incurred include the following:

- (a) the cost of planning and designing public facilities to be financed, including the cost of environmental evaluations of those facilities;
- (b) the costs associated with the creation of the Community Facilities District, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District; and
- (c) any other expenses incidental to the construction, completion, and inspection of the authorized work.

## EXHIBIT B

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

## **EXHIBIT B**

### **CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT No. 24 (PARK PLACE FACILITIES PHASE 1)**

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

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A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 24 (Park Place Facilities Phase 1) ("CFD No. 24") and collected each Fiscal Year, commencing in Fiscal Year 2014-15, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 24, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

#### **A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Subdivision Map, parcel map, condominium plan, or other recorded County map.

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

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 24: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 24 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City or CFD No. 24 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 24 of complying with City, CFD No. 24, or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 24 related to the analysis and reduction, if any, of the Special Tax on Residential Property in accordance with Section C.1 herein; the costs of the City or CFD No. 24 related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead relating to CFD No. 24; and amounts estimated or advanced by the City or CFD No. 24 for any other administrative purposes

of the CFD, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

**"Assigned Special Tax"** means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.2 below.

**"Backup Special Tax"** means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.3 below.

**"Bonds"** means any bonds or other debt (as defined in Section 53317(d) of the Act) issued by CFD No. 24 under the Act and payable from Special Taxes.

**"Buildable Lot"** means an individual lot, within a Final Subdivision Map or an area expected by CFD No. 24 to become Final Mapped Property, such as the area within a Tentative Tract Map, for which a building permit may be issued without further subdivision of such lot.

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

**"CFD No. 24"** means City of Ontario Community Facilities District No. 24 (Park Place Facilities Phase 1).

**"City"** means the City of Ontario, California.

**"City Council"** means the City Council of the City, acting as the legislative body of CFD No. 24.

**"County"** means the County of San Bernardino.

**"Designated Buildable Lot"** means a Buildable Lot for which a building permit has not been issued by the City as of the date of calculation of the Backup Special Tax.

**"Developed Property"** means for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property, Taxable Property Owner Association Property, and Taxable Public Property, for which a building permit or other applicable permit for new construction was issued after January 1, 2014, and before May 1 of the prior Fiscal Year.

**“Expected Residential Lot Count”** means 432 Buildable Lots of Residential Property or, as determined by the CFD Administrator, the number of Buildable Lots of Residential Property based on the most recent Tentative Tract Map(s) or most recently recorded Final Subdivision Map(s) or modified Final Subdivision Map(s).

**“Facilities”** means the public facilities authorized to be financed, in whole or in part, by CFD No. 24.

**“Final Mapped Property”** means, for each Fiscal Year, all Taxable Property, exclusive of Developed Property, Taxable Property Owner Association Property, and Taxable Public Property, which as of January 1 of the previous Fiscal Year was located within a Final Subdivision Map. The term Final Mapped Property shall include any parcel map or Final Subdivision Map, or portion thereof, that creates individual lots for which a building permit may be issued, including Parcels that are designated as a remainder Parcel (i.e., one where the size, location, etc., precludes any further subdivision or taxable use).

**“Final Subdivision Map”** means a final tract map, parcel map, or lot line adjustment approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or a condominium plan recorded pursuant to California Civil Code 1352 that, in either case, creates individual lots for which building permits may be issued without further subdivision.

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

**“Indenture”** means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time.

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

**“Maximum Special Tax”** means, with respect to an Assessor’s Parcel of Taxable Property, the Maximum Special Tax determined in accordance with Section C.1 below that can be levied in any Fiscal Year on such Assessor’s Parcel of Taxable Property.

**“Minimum Sale Price”** means the minimum price at which Units of a given Land Use Class have sold or are expected to be sold in a normal marketing environment and shall not include prices for such Units that are sold at a discount to expected sales prices for the purpose of stimulating the initial sales activity with respect to such Land Use Class.

**“Non-Residential Property”** means all Assessor’s Parcels of Developed Property for which a building permit was issued by the City permitting the construction of one or more non-residential structures or facilities.

**“Outstanding Bonds”** means all Bonds which are outstanding under and in accordance with the provisions of the Indenture.

**“Price Point Consultant”** means any consultant or firm of such consultants selected by CFD No. 24 that (a) has substantial experience in performing price point studies for residential units within community facilities districts established under the Act or otherwise estimating or confirming pricing for residential units in such community facilities districts, (b) has recognized expertise in analyzing economic and real estate data that relates to the pricing of residential units in such community facilities districts, (c) is in fact independent and not under the control of CFD No. 24 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 24, (ii) the City, (iii) any owner of real property in CFD No. 24, or (iv) any real property in CFD No. 24, and (e) is not connected with CFD No. 24 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 24 or the City.

**“Price Point Study”** means a price point study or a letter updating a previous price point study prepared by the Price Point Consultant pursuant to Section C herein.

**“Property Owner Association Property”** means, for each Fiscal Year, any property within the boundaries of CFD No. 24 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

**“Proportionately”** means (a) for Developed Property in the first step of Section D below, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Developed Property; however, for Developed Property in the fourth step of Section D below, Proportionately means that the amount of the increase above the Assigned Special Tax, if necessary, is equal for all Assessor’s Parcels of Developed Property, except that if the Backup Special Tax limits the increase on any Assessor’s Parcel(s), then the amount of the increase shall be equal for the remaining Assessor’s Parcels; (b) for Final Mapped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Final Mapped Property; (c) for Undeveloped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Undeveloped Property; (d) for Taxable Property Owner Association Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Property Owner Association Property; and (e) for Taxable Public Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Public Property.

**“Public Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 24 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

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

**“Residential Floor Area”** means all of the Square Footage of living area within the perimeter of a residential Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the building permit(s) issued for such Assessor’s Parcel, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 24. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for an Assessor’s Parcel, it shall remain fixed in all future Fiscal Years unless an appeal pursuant to Section F below is approved that results in a change in the actual Square Footage.

**“Residential Property”** means all Assessor’s Parcels of Taxable Property for which a building permit may be issued for purposes of constructing one or more Units.

**“Services”** means the services authorized to be financed, in whole or in part, by CFD No. 24.

**“Special Tax”** means the special tax authorized by the qualified electors of CFD No. 24 to be levied within the boundaries of CFD No. 24.

**“Special Tax Requirement”** means for any Fiscal Year that amount required, after taking into account available amounts held in the funds and accounts established under the Indenture, for CFD No. 24 to: (i) pay debt service on all Outstanding Bonds which is due in the calendar year that commences in such Fiscal Year; (ii) pay periodic costs on the Bonds, including, but not limited to, credit enhancement and rebate payments on the Bonds; (iii) pay Administrative Expenses; (iv) provide any amounts required to establish or replenish any reserve fund for the Bonds; (v) pay directly for acquisition or construction of Facilities, or the cost of Services, to the extent that the inclusion of such amounts does not increase the Special Tax levy on Final Mapped Property or Undeveloped Property; (vi) provide an amount equal to Special Tax delinquencies based on the historical delinquency rate for the Special Tax as determined by the CFD Administrator.

**“Square Footage”** or **“Sq. Ft.”** means the floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 24, issued for construction of Residential Property or Non-Residential Property, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

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

**“Taxable Property”** means, for each Fiscal Year, all of the Assessor’s Parcels within the boundaries of CFD No. 24 that are not exempt from the Special Tax pursuant to law or Section E below.



**“Taxable Property Owner Association Property”** means, for each Fiscal Year, all Assessor’s Parcels of Property Owner Association Property that are not exempt from the Special Tax pursuant to Section E below.

**“Taxable Public Property”** means, for each Fiscal Year, all Assessor’s Parcels of Public Property that are not exempt from the Special Tax pursuant to law or Section E below.

**“Tentative Tract Map”** means a map: (i) showing a proposed subdivision of an Assessor’s Parcel(s) and the conditions pertaining thereto; (ii) that may or may not be based on a detailed survey; and (iii) that is not recorded by the County to create legal lots.

**“Total Tax Burden”** means for any Unit, the annual Special Tax, together with *ad valorem* property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees, and charges which are levied and imposed on such Unit and the real property on which it is located and collected by the County on *ad valorem* tax bills and which are secured by such Unit and the real property on which it is located, assuming such Unit had been completed, sold, and subject to such levies and impositions, excluding service charges such as those related to sewer and trash.

**“Trustee”** means the trustee or fiscal agent under the Indenture.

**“TTM 18075”** means Tentative Tract Map No. 18075, the area of which is located within CFD No. 24 and is commonly referred to as planning area 12 (or PA 12).

**“TTM 18076”** means Tentative Tract Map No. 18076, the area of which is located within CFD No. 24 and is commonly referred to as planning area 8 (or PA 8).

**“TTM 18077”** means Tentative Tract Map No. 18077, the area of which is located within CFD No. 24 and is commonly referred to as planning area 7 (or PA 7).

**“TTM 18078”** means Tentative Tract Map No. 18078, the area of which is located within CFD No. 24 and is commonly referred to as planning area 6 (or PA 6).

**“TTM 18079”** means Tentative Tract Map No. 18079, the area of which is located within CFD No. 24 and is commonly referred to as planning area 9 (or PA 9).

**“TTM 18080”** means Tentative Tract Map No. 18080, the area of which is located within CFD No. 24 and is commonly referred to as planning area 10 (or PA 10).

**“TTM 18913-1”** means Tentative Tract Map No. 18913-1, the area of which is located within CFD No. 24, is commonly referred to as planning area 15 (or PA 15), and is the proposed location of the recreation center.

**“TTM 18945”** means Tentative Tract Map No. 18945, the area of which is located within CFD No. 24 and is commonly referred to as planning area 13 (or PA 13).

**“Undeveloped Property”** means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Final Mapped Property, Taxable Public Property, or Taxable Property Owner Association Property.

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

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, beginning with Fiscal Year 2014-15, all Taxable Property within CFD No. 24 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below. Assessor’s Parcels of Residential Property shall be assigned to Land Use Classes 1 through 26 as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor’s Parcels. Non-Residential Property shall be assigned to Land Use Classes 27 through 34.

**C. MAXIMUM SPECIAL TAX**

**1. Special Tax**

At least 30 days prior to the issuance of Bonds, the Assigned Special Tax on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At such time, CFD No. 24 shall select and engage a Price Point Consultant and the CFD Administrator shall request the Price Point Consultant to prepare a Price Point Study setting forth the Minimum Sale Price of Units within each Land Use Class. If based upon such Price Point Study the CFD Administrator calculates that the Total Tax Burden applicable to Units within one or more Land Use Classes of Residential Property to be constructed within CFD No. 24 shall exceed 1.95% of the Minimum Sale Price of such Units, the Assigned Special Tax shall be reduced to the extent necessary to cause the Total Tax Burden that shall apply to Units within such Land Use Class(es) not to exceed 1.95% of the Minimum Sale Price of such Units. Each Assigned Special Tax reduction for a Land Use Class shall be calculated by the CFD Administrator separately, and it shall not be required that such reduction be proportionate among Land Use Classes. In connection with any reduction in the Assigned Special Tax, the Backup Special Tax shall also be reduced by the CFD Administrator based on the percentage reduction in Maximum Special Tax revenues within the Tentative Tract Map area(s) where the Assigned Special Tax reductions occurred. The Special Tax reductions required pursuant to this paragraph shall be reflected in an amended notice of Special Tax lien which CFD No. 24 shall cause to be recorded by executing a certificate in substantially the form attached herein as Exhibit A.

**a. Developed Property**

**1) Maximum Special Tax**

The Maximum Special Tax that may be levied in any Fiscal Year for each Assessor's Parcel classified as Developed Property shall be the greater of (i) the amount derived by application of the Assigned Special Tax or (ii) the amount derived by application of the Backup Special Tax. The Maximum Special Tax shall not increase in future years, other than as calculated pursuant to Section C.1.a.3 below.

**2) Assigned Special Tax**

The Assigned Special Tax that may be levied in any Fiscal Year for each Land Use Class is shown below in Table 1.

**TABLE 1  
ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY**

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax
1	Residential Property	< 1,601	\$1,752 per Unit
2	Residential Property	1,601 – 1,700	\$1,868 per Unit
3	Residential Property	1,701 – 1,800	\$1,975 per Unit
4	Residential Property	1,801 – 1,900	\$2,070 per Unit
5	Residential Property	1,901 – 2,000	\$2,182 per Unit
6	Residential Property	2,001 – 2,100	\$2,199 per Unit
7	Residential Property	2,101 – 2,200	\$2,349 per Unit
8	Residential Property	2,201 – 2,300	\$2,491 per Unit
9	Residential Property	2,301 – 2,400	\$2,576 per Unit
10	Residential Property	2,401 – 2,500	\$2,688 per Unit
11	Residential Property	2,501 – 2,600	\$2,791 per Unit
12	Residential Property	2,601 – 2,700	\$2,898 per Unit
13	Residential Property	2,701 – 2,800	\$2,950 per Unit
14	Residential Property	2,801 – 2,900	\$3,010 per Unit
15	Residential Property	2,901 – 3,000	\$3,117 per Unit
16	Residential Property	3,001 – 3,100	\$3,272 per Unit
17	Residential Property	3,101 – 3,200	\$3,435 per Unit
18	Residential Property	3,201 – 3,300	\$3,499 per Unit
19	Residential Property	3,301 – 3,400	\$3,547 per Unit
20	Residential Property	3,401 – 3,500	\$3,603 per Unit
21	Residential Property	3,501 – 3,600	\$3,710 per Unit

22	Residential Property	3,601 – 3,700	\$3,795 per Unit
23	Residential Property	3,701 – 3,800	\$3,880 per Unit
24	Residential Property	3,801 – 3,900	\$3,965 per Unit
25	Residential Property	3,901 – 4,000	\$4,050 per Unit
26	Residential Property	> 4,000	\$4,135 per Unit
27	Non-Residential Property TTM 18075		\$32,771 per Acre
28	TTM 18076		\$31,193 per Acre
29	TTM 18077		\$24,756 per Acre
30	TTM 18078		\$28,780 per Acre
31	TTM 18079		\$32,255 per Acre
32	TTM 18080		\$33,625 per Acre
33	TTM 18913-1		\$36,156 per Acre
34	TTM 18945		\$36,156 per Acre

### 3) *Backup Special Tax*

The Backup Special Tax shall be \$3,083 per Unit for Residential Property in TTM 18075, \$3,131 per Unit for Residential Property in TTM 18076, \$3,716 per Unit for Residential Property in TTM 18077, \$3,483 per Unit for Residential Property in TTM 18078, \$2,541 per Unit for Residential Property in TTM 18079, \$2,777 per Unit for Residential Property in TTM 18080, \$3,716 per Unit for Residential Property in TTM 18913-1, and \$2,087 per Unit for Residential Property in TTM 18945. However, if the Expected Residential Lot Count does not equal 53 for TTM 18075, 46 for TTM 18076, 65 for TTM 18077, 67 for TTM 18078, 69 for TTM 18079, 57 for TTM 18080, or 75 for TTM 18945, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Residential Property shall be calculated separately for each Tentative Tract Map area according to the following formula:

Backup Special Tax = \$32,771 for TTM 18075 or  
\$31,193 for TTM 18076 or  
\$24,756 for TTM 18077 or  
\$28,780 for TTM 18078 or  
\$32,255 for TTM 18079 or  
\$33,625 for TTM 19080 or  
\$36,156 for TTM 18945

× Acreage of Designated Buildable Lots  
of Residential Property within the  
applicable Tentative Tract Map

÷ number of Designated Buildable Lots  
of Residential Property within the  
applicable Tentative Tract Map

If any portion of a Final Subdivision Map, or any area expected by CFD No. 24 to become Final Mapped Property, such as the area within a Tentative Tract Map, changes any time after the City has issued Bonds, causing an adjustment to the number of Designated Buildable Lots, then the Backup Special Tax for all Designated Buildable Lots in the specific area where the change occurred shall be calculated according to the following steps:

**Step 1:** Determine the total Backup Special Taxes that could have been collected from Designated Buildable Lots prior to the Final Subdivision Map or expected Final Mapped Property area change.

**Step 2:** Divide the amount determined in Step 1 by the number of Designated Buildable Lots that exists after the Final Subdivision Map or expected Final Mapped Property area change.

**Step 3:** Apply the amount determined in Step 2 as the Backup Special Tax per Unit for each Assessor's Parcel of Designated Buildable Lots in the area where the Final Subdivision Map or expected Final Mapped Property area change occurred.

***The Backup Special Tax for an Assessor's Parcel shall not change once an Assessor's Parcel is classified as Developed Property.***

***b. Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property***

The Maximum Special Tax for Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property shall be \$32,771 per Acre for such property in TTM 18075, \$31,193 per Acre for such property in TTM 18076, \$24,756 per Acre for such property in TTM 18077, \$28,780 per Acre for such property in TTM 18078, \$32,255 per Acre for such property in TTM 18079, \$33,625 per Acre for such property in TTM 18080, and \$36,156 per Acre for such property in TTM 18945, and shall not be subject to increase or reduction and, therefore, shall remain the same in every Fiscal Year.

## **2. Multiple Land Use Classes on an Assessor's Parcel**

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

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

Each Fiscal Year, beginning with Fiscal Year 2014-15, the CFD Administrator shall determine the Special Tax Requirement for such Fiscal Year. The Special Tax shall then be levied as follows:

**First:** If needed to satisfy the Special Tax Requirement, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property up to 100% of the applicable Assigned Special Tax;

**Second:** If additional monies are needed to satisfy the Special Tax Requirement after the first step has been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Final Mapped Property up to 100% of the Maximum Special Tax for Final Mapped Property;

**Third:** If additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property;

**Fourth:** If additional monies are needed to satisfy the Special Tax Requirement after the first three steps have been completed, then the levy of the Special Tax on each Assessor's Parcel of Developed Property whose Maximum Special Tax is determined through the application of the Backup Special Tax shall be increased Proportionately from the Assigned Special Tax up to the Maximum Special Tax for each such Assessor's Parcel;

**Fifth:** If additional monies are needed to satisfy the Special Tax Requirement after the first four steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Property Owner Association Property up to the Maximum Special Tax for Taxable Property Owner Association Property;

**Sixth:** If additional monies are needed to satisfy the Special Tax Requirement after the first five steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property up to the Maximum Special Tax for Taxable Public Property.

Notwithstanding the above, under no circumstances shall the Special Tax levied in any Fiscal Year on any Assessor's Parcel of Residential Property for which an occupancy permit for private residential use has been issued be increased as a result of delinquency

or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 24 by more than ten percent above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

**E. EXEMPTIONS**

No Special Tax shall be levied on up to 17.03 Acres of Public Property and up to 6.13 Acres of Property Owner Association Property, not including Assessor's Parcel Numbers 0218-022-13 and 0218-083-28, as described further in this paragraph. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property. In addition, the sites designated as PA 15 within TTM 18913-1 (Assessor's Parcel Number 0218-022-13) and Lot A within TTM 18077 (Assessor's Parcel Number 0218-083-28) shall be exempt from the Special Tax unless and until the site becomes Developed Property.

Property Owner Association Property or Public Property that is not exempt from the Special Tax under this section shall be subject to the levy of the Special Tax and shall be taxed Proportionately as part of the fifth or sixth step, respectively, in Section D above, up to 100% of the applicable Maximum Special Tax for Taxable Property Owner Association Property and Taxable Public Property. No Special Tax shall be levied in any Fiscal Year on Assessor's Parcels that have fully prepaid the Special Tax obligation pursuant to the formula set forth in Section H.

**F. APPEALS**

Any property owner may file a written appeal of the Special Tax with CFD No. 24 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

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

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

## **G. MANNER OF COLLECTION**

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

## **H. PREPAYMENT OF SPECIAL TAX**

The following definitions apply to this Section H:

**“CFD Public Facilities”** means \$15,900,000 for each Prepayment Period, or such lower number as determined by the City Council to be sufficient to fund the Facilities and Services to be provided by CFD No. 24.

**“Expenditures Fund”** means funds or accounts, regardless of their names, that are established to hold moneys that are available to acquire or construct Facilities and to fund Services.

**“Future Facilities Costs”** means the CFD Public Facilities minus (i) Facilities and Services costs previously paid from the Expenditures Fund during the Prepayment Period in which the prepayment is being made, (ii) moneys currently on deposit in the Expenditures Fund from deposits made during the Prepayment Period in which the prepayment is being made, and (iii) moneys currently on deposit in an escrow fund that are expected to be available to finance Facilities costs. In no event shall the amount of Future Facilities Costs be less than zero.

**“Prepayment Period”** means one of three periods of time during which a Special Tax prepayment may be made.

**“Prepayment Period 1”** means July 1, 2014, through June 30, 2048.

**“Prepayment Period 2”** means July 1, 2048, through June 30, 2081.

**“Prepayment Period 3”** means July 1, 2081, through June 30, 2115.

### **1. Prepayment in Full**

The obligation of an Assessor's Parcel to pay the Special Tax may be prepaid as described herein, provided that a prepayment may be made only for Assessor's Parcels for which a building permit for new construction was issued after January 1, 2014, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel. The CFD Administrator may charge a fee for providing this service. Prepayment in any six month period must



be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture.

The Special Tax Prepayment Amount (defined below) shall be calculated as summarized below (capitalized terms as defined below):

Bond Redemption Amount	
plus	Redemption Premium
plus	Future Facilities Amount
plus	Defeasance Amount
plus	Administrative Fees and Expenses
<u>less</u>	<u>Reserve Fund Credit</u>
Total	Prepayment Amount

As of the proposed date of prepayment, the Special Tax Prepayment Amount (defined below) shall be calculated by the CFD Administrator as follows:

**Paragraph No.**

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel, and determine the Prepayment Period for the proposed prepayment.
2. Compute the Assigned Special Tax and Backup Special Tax for the Assessor's Parcel to be prepaid based on the Developed Property Special Tax which is, or could be, charged in the current Fiscal Year. For Assessor's Parcels of Final Mapped Property (for which a building permit has been issued but which is not yet classified as Developed Property) to be prepaid, compute the Assigned Special Tax and Backup Special Tax for that Assessor's Parcel as though it was already designated as Developed Property, based upon the building permit which has already been issued for that Assessor's Parcel.
3. (a) Divide the Assigned Special Tax computed pursuant to Paragraph 2 by the total estimated Assigned Special Tax for CFD No. 24 based on the Developed Property Special Tax which could be charged in the current Fiscal Year on all expected development through buildout of CFD No. 24, excluding any Assessor's Parcels which have been prepaid, and  
  
(b) Divide the Backup Special Tax computed pursuant to Paragraph 2 by the estimated total Backup Special Tax at buildout of CFD No. 24, excluding any Assessor's Parcels which have been prepaid.
4. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "Bond Redemption Amount").

5. Multiply the Bond Redemption Amount computed pursuant to Paragraph 4 by the applicable redemption premium (e.g., the redemption price minus 100%), if any, on the Outstanding Bonds to be redeemed (the “Redemption Premium”).
6. Compute the current Future Facilities Costs.
7. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the amount determined pursuant to Paragraph 6 to compute the amount of Future Facilities Costs to be prepaid (the “Future Facilities Amount”).
8. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date following the current Fiscal Year until the earliest redemption date for the Outstanding Bonds.
9. Determine the Special Tax levied on the Assessor’s Parcel in the current Fiscal Year which has not yet been paid.
10. Add the amounts computed pursuant to Paragraphs 8 and 9 to determine the “Defeasance Amount”.
11. Verify the administrative fees and expenses of CFD No. 24, including the costs to compute the prepayment, the costs to invest the prepayment proceeds, the costs to redeem Bonds, and the costs to record any notices to evidence the prepayment and the redemption (the “Administrative Fees and Expenses”).
12. If reserve funds for the Outstanding Bonds, if any, are at or above 100% of the reserve requirement (as defined in the Indenture) on the prepayment date, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the “Reserve Fund Credit”). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement on the prepayment date or the redemption date.
13. The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Paragraphs 4, 5, 7, 10, and 11, less the amount computed pursuant to Paragraph 12 (the “Prepayment Amount”).
14. From the Prepayment Amount, the amounts computed pursuant to Paragraphs 4, 5, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Paragraph 7 shall be deposited into the Expenditures Fund. The amount computed pursuant to Paragraph 11 shall be retained by CFD No. 24.

The Special Tax Prepayment Amount may be sufficient to redeem other than a \$5,000 increment of Bonds. In such cases, the increment above \$5,000, or integral multiple

thereof, will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of Bonds or to make debt service payments.

As a result of the payment of the current Fiscal Year's Special Tax levy as determined under Paragraph 9 (above), the CFD Administrator shall remove the current Fiscal Year's Special Tax levy for such Assessor's Parcel from the County tax rolls. With respect to any Assessor's Parcel that is prepaid during Prepayment Period 3, the CFD Administrator shall cause a suitable notice to be recorded in compliance with the Act to indicate that the Special Tax has been prepaid and that the obligation of such Assessor's Parcel to pay the Special Tax shall cease.

With respect to the Special Tax for any Assessor's Parcel that is prepaid during Prepayment Period 1 or Prepayment Period 2, the obligation of such Assessor's Parcel to pay the Special Tax shall be tolled, or suspended, through the end of such Prepayment Period, but shall resume in the first Fiscal Year of the subsequent Prepayment Period. The CFD Administrator shall cause a suitable notice to be recorded in compliance with the Act to indicate that the Special Tax has been satisfied for the remainder of the applicable Prepayment Period but has not been permanently satisfied and the obligation to pay the Special Tax will resume in the first Fiscal Year of the Prepayment Period following the Prepayment Period in which the prepayment was made. Once the obligation of an Assessor's Parcel to pay the Special Tax resumes, the Special Tax for the then applicable Prepayment Period may be prepaid.

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of Maximum Special Tax that may be levied on Taxable Property within CFD No. 24 (after excluding 17.03 Acres of Public Property and 6.13 acres of Property Owner Association Property, not including Assessor's Parcel Numbers 0218-022-13 and 0218-083-28, as set forth in Section E) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds.

## **2. Prepayment in Part**

The Special Tax on an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2014, may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

$$PP = PF \times \%$$

The terms above have the following meaning:

PP = the partial prepayment

PF = the Prepayment Amount (full prepayment) for the Special Tax calculated according to Section H.1

% = the percentage by which the owner of the Assessor's Parcel(s) is partially prepaying the Special Tax

The Special Tax partial prepayment amount must be sufficient to redeem at least a \$5,000 increment of Bonds.

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay the Special Tax and the percentage by which the Special Tax shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Special Tax for an Assessor's Parcel within thirty (30) days of the request and may charge a fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section H.1, and (ii) indicate in the records of CFD No. 24 that there has been a partial prepayment of the Special Tax and that a portion of the Special Tax with respect to such Assessor's Parcel, equal to the outstanding percentage (100% - "%", as defined above) of the Maximum Special Tax, shall continue to be levied on such Assessor's Parcel pursuant to Section D during the Prepayment Period in which the partial prepayment is made.

For partial prepayments made during Prepayment Period 1 or Prepayment Period 2, the full amount of the Special Tax shall resume in the first Fiscal Year of the Prepayment Period following the Prepayment Period in which the partial prepayment was made. Once the obligation of an Assessor's Parcel to pay the Special Tax resumes, the Special Tax for the then applicable Prepayment Period may be prepaid.

#### **I. TERM OF SPECIAL TAX**

The Fiscal Year after which no further Special Tax shall be levied or collected is Fiscal Year 2114-2115, except that the Special Tax that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years.

## EXHIBIT A

### CERTIFICATE OF MODIFICATION OF SPECIAL TAX (PAGE 1 OF 3)

#### CITY OF ONTARIO AND CFD No. 24 CERTIFICATE

1. Pursuant to Section C.1 of the Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 24 (Park Place Facilities Phase 1) (“CFD No. 24”), the Assigned Special Tax and the Backup Special Tax for Developed Property within CFD No. 24 has been modified.
  - a. The information in Table 1 relating to the Assigned Special Tax for Developed Property within CFD No. 24, as stated in Section C.1.a.2 of the Rate and Method of Apportionment, has been modified as follows:

**TABLE 1**  
**ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY**

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax
1	Residential Property	< 1,601	\$[     ] per Unit
2	Residential Property	1,601 – 1,700	\$[     ] per Unit
3	Residential Property	1,701 – 1,800	\$[     ] per Unit
4	Residential Property	1,801 – 1,900	\$[     ] per Unit
5	Residential Property	1,901 – 2,000	\$[     ] per Unit
6	Residential Property	2,001 – 2,100	\$[     ] per Unit
7	Residential Property	2,101 – 2,200	\$[     ] per Unit
8	Residential Property	2,201 – 2,300	\$[     ] per Unit
9	Residential Property	2,301 – 2,400	\$[     ] per Unit
10	Residential Property	2,401 – 2,500	\$[     ] per Unit
11	Residential Property	2,501 – 2,600	\$[     ] per Unit
12	Residential Property	2,601 – 2,700	\$[     ] per Unit
13	Residential Property	2,701 – 2,800	\$[     ] per Unit
14	Residential Property	2,801 – 2,900	\$[     ] per Unit
15	Residential Property	2,901 – 3,000	\$[     ] per Unit
16	Residential Property	3,001 – 3,100	\$[     ] per Unit
17	Residential Property	3,101 – 3,200	\$[     ] per Unit
18	Residential Property	3,201 – 3,300	\$[     ] per Unit

## EXHIBIT A

### CERTIFICATE OF MODIFICATION OF SPECIAL TAX (PAGE 2 OF 3)

19	Residential Property	3,301 – 3,400	\$[ ] per Unit
20	Residential Property	3,401 – 3,500	\$[ ] per Unit
21	Residential Property	3,501 – 3,600	\$[ ] per Unit
22	Residential Property	3,601 – 3,700	\$[ ] per Unit
23	Residential Property	3,701 – 3,800	\$[ ] per Unit
24	Residential Property	3,801 – 3,900	\$[ ] per Unit
25	Residential Property	3,901 – 4,000	\$[ ] per Unit
26	Residential Property	> 4,000	\$[ ] per Unit
	Non-Residential Property		
27	TTM 18075		\$[ ] per Acre
28	TTM 18076		\$[ ] per Acre
29	TTM 18077		\$[ ] per Acre
30	TTM 18078		\$[ ] per Acre
31	TTM 18079		\$[ ] per Acre
32	TTM 18080		\$[ ] per Acre
33	TTM 18913-1		\$[ ] per Acre
34	TTM 18945		\$[ ] per Acre

- b. The Backup Special Tax for Developed Property, as stated in Section C.1.a.3, shall be modified as follows:

The Backup Special Tax shall be \$[ ] per Unit for Residential Property in TTM 18075, \$[ ] per Unit for Residential Property in TTM 18076, \$[ ] per Unit for Residential Property in TTM 18077, \$[ ] per Unit for Residential Property in TTM 18078, \$[ ] per Unit for Residential Property in TTM 18079, \$[ ] per Unit for Residential Property in TTM 18080, and \$[ ] per Unit for Residential Property in TTM 18945. However, if the Expected Residential Lot Count does not equal 53 for TTM 18075, 46 for TTM 18076, 65 for TTM 18077, 67 for TTM 18078, 69 for TTM 18079, 57 for TTM 18080, or 75 for TTM 18945, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Residential Property shall be calculated according to the formula on the follow page:

## EXHIBIT A

### CERTIFICATE OF MODIFICATION OF SPECIAL TAX (PAGE 3 OF 3)

Backup Special Tax = \$[ ] for TTM 18075 or  
\$[ ] for TTM 18076 or  
\$[ ] for TTM 18077 or  
\$[ ] for TTM 18078 or  
\$[ ] for TTM 18079 or  
\$[ ] for TTM 19080 or  
\$[ ] for TTM 18945

× Acreage of Designated Buildable Lots  
of Residential Property within the  
applicable Tentative Tract Map

÷ number of Designated Buildable Lots  
of Residential Property within the  
applicable Tentative Tract Map

2. The Special Tax for Developed Property may only be modified prior to the first issuance of CFD No. 24 Bonds.
3. Upon execution of this certificate by CFD No. 24, CFD No. 24 shall cause an amended notice of Special Tax lien for CFD No. 24 to be recorded reflecting the modifications set forth herein.

By execution hereof, the undersigned acknowledge, on behalf of the City and CFD No. 24, receipt of this certificate and modification of the Rate and Method of Apportionment as set forth in this certificate.

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE  
FACILITIES PHASE 1)

By: \_\_\_\_\_

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES – PHASE I).

WHEREAS, the City Council (the “City Council”) of the City of Ontario (the “City”), pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), has this date adopted its Resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes,” stating its intention to establish City of Ontario Community Facilities District No. 24 (Park Place Facilities – Phase I) (the “Community Facilities District”) for the purpose of financing certain public facilities (the “Facilities”) and services, as further provided in said Resolution; and

WHEREAS, in order to finance the Facilities it is necessary to incur bonded indebtedness in the amount of up to \$57,000,000;

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

SECTION 1. The City Council hereby declares that in order to finance the Facilities, it is necessary to incur bonded indebtedness.

SECTION 2. The purpose for which the proposed debt is to be incurred is to provide the funds necessary to pay the costs of the Facilities, including all costs and estimated costs incidental to, or connected with, the accomplishment of said purpose and of the financing thereof, as permitted by Section 53345.3 of the Act.

SECTION 3. The maximum amount of the proposed debt is \$57,000,000.

SECTION 4. The City Council hereby fixes Tuesday, October 7, 2014, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the proposed debt authorization.

SECTION 5. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53346 of the Act.

SECTION 6. 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 7. This Resolution shall take effect immediately upon its adoption.

SECTION 8. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2<sup>nd</sup> day of September 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 2, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-     duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014.

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

(SEAL)

# CITY OF ONTARIO

*Agenda Report*  
September 2, 2014

**SECTION:  
CONSENT CALENDAR**

**SUBJECT: AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN GENSTAR DEVELOPMENT CORPORATION INVESTMENTS 6, L.P., AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO CONFORM WITH THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS**

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving an amendment (File No. PDA14-003) to the Development Agreement between Genstar Development Corporation Investments 6, L.P., a Delaware Limited Partnership, and the City of Ontario to update certain provisions of the existing Development Agreement and to conform with the Construction Agreement Amendment with NMC Builders, LLC of Ontario, California, to update certain provisions of the existing Development Agreement (File No. PDA06-002), and to provide for phasing of the construction of public infrastructure.

**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:** The proposed Development Agreement Amendment will update certain provisions of the existing Development Agreement to conform to the Construction Agreement Amendment with NMC Builders, LLC. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. Original Model Colony revenue will not be used to support the New Model Colony development. The Development Agreement and the related tract map conditions require the developer to construct public infrastructure.

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

Prepared by: Rudy Zeledon

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A. 09/02/2014

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

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

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

4

**BACKGROUND:** On August 19, 2014, the City Council introduced an ordinance approving an amendment (File No. PDA14-003) to the Development Agreement between Genstar Development Corporation Investments 6, L.P. and the City of Ontario. The original Development Agreement (File No. PDA06-002) was approved by City Council on February 20, 2006, for Tentative Tract Map Nos. 17931, 17932, and 17933 within the Esperanza Specific Plan. Genstar Development Corporation Investments 6, L.P. and the City recognized that the financial commitment required for construction in the New Model Colony was substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, a Development Agreement was entered into providing for the development of up to 289 dwelling units. The Development Agreement, approved in February 2007, addressed issues of parkland, public facilities, public services funding, infrastructure and affordable housing.

The Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Continues the requirement for funding of Fire Station No. 9
- Continues the requirement for funding of the Regional Water and Storm Water Treatment Improvements
- Retention of Public Services Funding Fee amounts and Payment Terms
- Modification of School Financing Provisions
- Modifications of the amount of the CFD to finance City services

The Amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements. The Applicant is in the process of selling the property and, therefore, language has been added to the Development Agreement to allow for the transfer of the property to a successor owner under the provisions of the Development Agreement.

The Development Agreement and the Amendment continue to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the Amendment are as follows:

Term: Maintains the same term of ten years with a five year option.

Assignment: Assignable with all terms and conditions applying to the assignee. New provisions are added in the Amendment to recognize and provide City approval of all partial assignments.

Fees:

Development Impact Fees: To be paid at current amounts; varies by category (i.e. Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.

Community Facilities

District (CFD): City will cooperate with Owner to form a CFD to reimburse costs of infrastructure construction and maintenance of public facilities.

Parks/Open Space: Maintains The Ontario Plan (General Plan) requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and recognizes that Genstar Development Corporation Investments 6, L.P., will construct 2.13 acres of parks and open space and pay a pro-rate fee for the remainder of the park and open space requirements

Housing: Maintains the provision of affordable housing as required by the General Plan through construction, rehabilitation, or by paying an in-lieu fee.

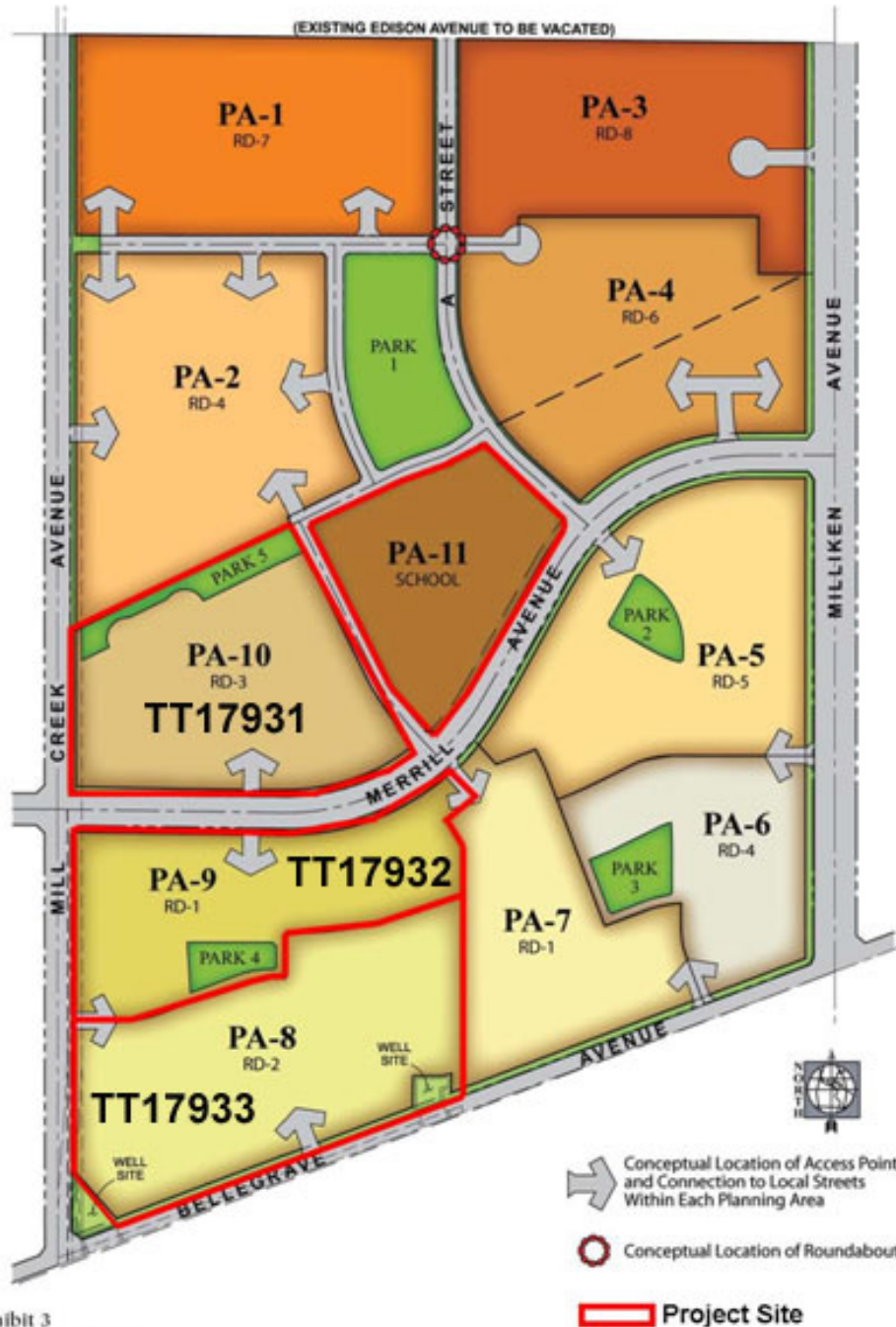
Schools: Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.

Termination: Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

In considering the application at their July 22, 2014 meeting, 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 Commission unanimously (4-0) recommended approval of the Development Agreement Amendment to the City Council.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were reviewed in conjunction with an Addendum to the Esperanza Specific Plan (SCH #2002061047). This application 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 1. EXECUTIVE SUMMARY



### Exhibit 3 Land Use Plan

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION INVESTMENTS 6, L.P., (ESPERANZA SPECIFIC PLAN) (FILE NO. PDA14-003) TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT (FILE NO. PDA06-002) TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 17931, 17932, 17933, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-332-12 and 0218-252-16).

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, on the 20<sup>th</sup> day of February 2006, the City Council of the City of Ontario, adopted Ordinance No. 2856, approving a Development Agreement between Armada Ontario Associates, and the City; and

WHEREAS, on June 24, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date and continued the Project to the July 22, 2014 hearing; and

WHEREAS, on July 22, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date. After considering all public testimony, the Planning Commission recommended approval of the Development Agreement Amendment to the City Council with a vote of 4 to 0 (Gage absent, Gregorek recusing); and

WHEREAS, attached to this resolution, marked Exhibit "A" and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between Genstar Development Corporation Investments 6, L.P. and the City of Ontario, File No. PDA14-003. Hereinafter in this Resolution, the Development Agreement is referred to as the "Amendment"; and

WHEREAS, as the first action on the Project, on August 19, 2014, the City Council adopted an Addendum to Esperanza Specific Plan Environmental Impact Report (SCH #2004071001) adopted by the City Council on January 16, 2007. This application 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, all legal prerequisites to the adoption of this Resolution have occurred.

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

SECTION 1. Based upon substantial evidence presented to the Planning Commission during the above-referenced hearing on July 22, 2014, 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 73.8 acres of residential and school land within Planning Areas 8, 9, 10, and of the Esperanza Specific Plan, generally located on northeast and southeast corners of Mill Creek Avenue and Eucalyptus Avenue and is presently vacant; and

b. The properties to the north of the Project site are within Planning Area 2 of Esperanza Specific Plan and planned for single family development and developed dairy/agriculture uses. The property to the south of the project site is within the City of Eastvale and developed with single family residential development. The property to the east is within Planning Area 4 of Esperanza Specific Plan is planned for single family residential development and a middle school and is vacant. The property to the west is zoned Specific Plan/Agriculture Preserve, and developed with dairy/agriculture uses; and

c. The Development Agreement and the Amendment to the Development Agreement establishes parameters for the development of Esperanza Specific Plan residential projects. The Development Agreement also grants Genstar Development Corporation Investments 6, L.P., 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

d. The Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders ("NMC"), LLC; and

e. The Amendment to the Development Agreement will provide for the phasing of various improvements established by Esperanza Specific Plan; and

f. 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

g. 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

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

i. 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 but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in The Avenue Specific Plan EIR certified by the City Council on December 19, 2006.

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 2<sup>nd</sup> day of September, 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

(SEAL)

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 August 19, 2014, and adopted at the regular meeting held September 2, 2014, by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. \_\_\_\_\_ duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014 and that Summaries of the Ordinance were published on August 26, 2014 and September 9, 2014, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

Exhibit A – First Amendment to the Development Agreement  
(See Attached)

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND  
BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT  
CORPORATION INVESTMENTS 6, L.P. (ESPERANZA WEST)**

This First Amendment (hereinafter "First Amendment") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 201\_ by and between the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Genstar Development Corporation Investments 6 L.P., a Delaware limited partnership (hereinafter "OWNER").

**RECITALS**

WHEREAS, the CITY and the previous Owner, Armada Ontario Development L.L.C. ("Armada Ontario") previously entered into that certain Armada Ontario – Esperanza Development Agreement (No. PDA 06-003) dated February 20, 2007 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement"); and

WHEREAS, the current OWNER, Genstar Development Corporation Investments 6 L.P. (Esperanza West) named above as OWNER, has acquired the Property from the previous Owner on December 14, 2010; and

WHEREAS, under the terms of the sale and transfer of the Property, to OWNER, OWNER has been assigned and has expressly and unconditionally assumed all the rights, duties and obligations of Armada Ontario under the Development Agreement, including, without limitation, all of the general rights, duties and obligations of OWNER under the Development Agreement; and

WHEREAS, OWNER has requested that the CITY approve the transfer and assignment of the "Original Development Agreement" from Armada Ontario; and

WHEREAS, the CITY and Armada Ontario also entered into that First Supplemental Memorandum to the Development Agreement By and Between the City of Ontario and Armada Ontario, to extend and clarify the provisions of the Development Agreement relating to timing of payments under Section 4.6 Public Services Funding Fees; and

WHEREAS, the provisions of the First Supplemental Memorandum allowed the temporary deferral of the required payment of the final installment of the Public Services Funding Fee; 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, the CITY and NMC Builders, LLC, a California limited liability company ("NMC Builders"), entered into that certain Agreement for the Financing and Construction of Phase I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony dated October 4, 2005, which is referred to both herein and in the Development Agreement as the "Construction Agreement;" and

WHEREAS, the CITY and NMC Builders have entered into the Amended and Restated Construction Agreement dated August 21, 2012 that supersedes and replaces the Construction Agreement (the "Construction Agreement Amendment"); and

WHEREAS, NMC Builders LLC is identified as the Developer under the Construction Agreement Amendment; and

WHEREAS, OWNER is a member of NMC Builders and is a "Member" as such term is defined in the Construction Agreement Amendment; and

WHEREAS, the CITY and OWNER agree that execution of this First Amendment shall constitute CITY's approval of the assignment of the Development Agreement to GENSTAR DEVELOPMENT CORPORATION Investments 6 L.P. (Esperanza West) and a Certification of Agreement Compliance under Section 6.4 of the Development Agreement shall be issued within 10 days following the Effective Date of this First Amendment; and

WHEREAS, the current OWNER expects to transfer the Property to a successor OWNER under the provisions of Section 2.4 of the Original Development Agreement prior to completion of the process required for the adoption of the Ordinance to approve this First Amendment and it is expected that OWNER and the successor OWNER will execute the necessary assignments and assumptions as required by the Original Development Agreement.

## **AGREEMENTS**

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

### **1. DEFINITIONS AND EXHIBITS.**

1.1 Existing Definitions. The following terms when used in this First Amendment shall have the same meaning as defined in the Original Development Agreement: "CITY"; "Construction Agreement"; "Development"; "Development Approvals"; "Development Exaction"; "Development Impact Fee"; "Development Plan"; "General Plan"; "Land Use Regulations"; "OWNER"; "Project", "Property", "Specific Plan"; "Subsequent Development Approvals"; and "Subsequent Land Use Regulations".

## 1.2 Additional and Modified Definitions.

### 1.2.1 The following additional terms shall be defined as follows:

“Construction Agreement Amendment” means that certain Amended and Restated Agreement for the Financing and Construction of Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders dated August 21, 2012.

“Effective Date” means the date that the ordinance adopting this First Amendment becomes effective.

“Model Units” means a maximum of Twelve(12) units constructed by OWNER prior to the construction of any Production Units and not offered for sale and occupancy until after all of the of the building permits for Production Units are issued.

“OWNER” means Genstar Development Corporation Investments 6, L.P., a Delaware limited liability partnership as successor in interest to Armada Ontario L.L.C, a Delaware Limited Liability Corporation.

“Owner’s Fire Station No. 9 Capital Contribution” is added to mean OWNER’s share, calculated on a per-unit basis under the provisions of the Construction Agreement Amendment and the NMC Builders LLC’s agreements, for the costs of the completion of the design and construction of Fire Station No. 9, as estimated by CITY.

“Phase 1 Recycled Water System Improvements” means the extension of the recycled water system to serve the Property in Eucalyptus, Milliken and Edison Avenues as described in the attached Exhibit F.

“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 F.

“Production Units” means all units constructed for sale and occupancy by OWNER but excludes the maximum of Twelve (12) Model Units constructed by OWNER for promotion of sales.

“Storm Water Capacity Availability Equivalents” means a designated portion of the total Storm Water Capacity Availability made available through the completion of construction of each Phase of regional storm water treatment facilities by the NMC Builders. OWNER shall be required to provide evidence of sufficient Storm Water Capacity Availability Equivalents (or portions thereof) based upon the storm water generation factors and assumptions contained in the Construction Agreement Amendment.



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

1.2.2 The following definitions shall be revised as follows:

“Existing Development Approvals” is revised to mean all Development Approvals approved or issued prior to the Effective Date of this Amendment. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit “C-R” and all other Development Approvals that are a matter of public record on the Effective Date of this Amendment.

“Existing Land Use Regulations” is revised to mean all Land Use Regulations in effect on the Effective Date of this Amendment and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D-R,” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment.

“Improvement” or “Improvements” is revised to mean those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract Nos.18380 (A Map), 17931,17932, and 17933 (B Maps) and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.3 Exhibits. The following documents are attached to, and by this reference made a part of, this First Amendment:

Exhibit “C-R” –Revised Existing Development Approvals

Exhibit “D-R” – Revised Existing Land Use Regulations

Exhibit “F” — Infrastructure Improvements Exhibit

## **2. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO CONFORM TO CONSTRUCTION AGREEMENT AMENDMENT**

2.1 Continuing Requirement for the Funding of Fire Station No. 9 by NMC Builders for Issuance of Building Permits. The issuance of building permits for Production Units within the Property is contingent upon, among other things, the

provision of payments from NMC Builders for the completion of the construction of CITY's Fire Station No. 9. Except as provided in section 2.2 below, CITY shall not issue building permits for the construction of Production Units within the Property unless and until CITY receives payments from NMC Builders in the amount estimated by CITY to be necessary and sufficient for the completion of the design and construction of Fire Station No. 9.

2.2 Fire Station Funding Requirements for Any permits Issued Prior the Provision of Payments from NMC Builders for the Completion of Construction of CITY'S Fire Station No. 9. If OWNER requests that CITY issue building permits for any Model Units or Production Units prior to CITY's receipt of payments from NMC Builders in an amount deemed by CITY to be necessary and sufficient for the design and construction of Fire Station No. 9, then prior to and as a condition precedent to CITY's issuance of any such building permits for the construction of any Model Units or Product Units, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's Fire Station No. 9 Capital Contribution allocable to such unit(s).

2.3 Continuing Requirement for the Funding of Regional Water and Storm Water Treatment Improvements. Prior to, and as a condition precedent to CITY's approval of the final Tract Map for Tract Nos. 17931, 17932 and 17933, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for all Model Units and Production Units to be constructed on the Property. Prior to, and as a condition precedent to CITY's issuance of grading permits for any grading of the Property or prior to, and as a condition precedent to CITY's approval of the final Tract Map for Tract Nos. 17931, 17932 or 17933, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the Project. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project as defined in the Construction Agreement Amendment and as of the Effective Date of this Amendment such net acreage has been determined to be 54.13 acres. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER may provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

2.4 Retention of Public Services Funding Fee Amounts and Payment Terms. CITY and OWNER acknowledge and agree that the modifications to amount and payment terms included in Section 3.7.4 of the Construction Agreement Amendment shall not apply to OWNER's Public Services Funding Fee Amounts and payment terms as OWNER entered into a Development Agreement with CITY prior to the effective date of the Construction Agreement Amendment. Additionally, CITY agrees that OWNER is in compliance with the requirements for payment of the first and second installments of the Public Services Funding Fees as specified in the Original Development Agreement. Finally, CITY and OWNER agree that OWNER shall continue to be required to pay the third and final installment as provided in the Original Development Agreement.

2.5 Modification of School Financing Provisions. The provisions of Section 5.2 School Financing. of the Original Development Agreement shall be superseded and replaced with the following:

“5.2 Schools. CITY and OWNER agree that OWNER, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met its school obligations may be required by the CITY as a condition to the issuance by the City of any entitlements for OWNER’s Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), CITY shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 5.2.”

2.6 Modification of the Amounts of the CFD to Finance City Services. OWNER expects to transfer ownership to another entity and assign its rights and responsibilities under the Original Development Agreement and this First Amendment to the successor OWNER. CITY and OWNER agree that if the successor OWNER is also the OWNER of adjoining property within the Esperanza Specific Plan, then CITY and OWNER agree to pursue the necessary actions to dissolve the existing Community Facilities District (CFD) to finance CITY services and improvements through annual special taxes and pursue the formation of a single Community Facilities District to include the Property and the adjoining property within the Esperanza Specific Plan area. If the ownership is transferred and the successor OWNER is also the owner of the adjacent property within the Esperanza Specific Plan area and the existing Community Facilities District is dissolved, then prior to, and as a condition precedent to, the recordation of any final subdivision maps, the area covered by such map shall be included in a new Community Facilities District (CFD) to finance CITY services through annual special taxes. The amounts contained in Section 5.1 Financing Mechanism(s) in the Original Development Agreement shall also be modified as follows:

Single Family Detached Dwelling Unit to \$1,387.00

Multiple Family Dwelling Unit to \$1,202.00

Gated Apartment Community Dwelling Unit to \$1,008.00

Non-Residential buildings to \$.26 per square foot.

These modified amounts shall be subject to an automatic increase, not to exceed four (4%) percent per year, beginning on January 1, 2015. If ownership of the Property is not transferred, or if the successor OWNER does not submit a Petition to CITY to dissolve the existing Community Facilities District or CITY is unable to dissolve the existing Community Facilities District for any reason, then the currently Community Facilities District and the adopted Rate and Method for such District shall continue to utilize the current annual special taxes for CITY services.

2.7 Remaining Provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS All other provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS shall continue and shall be unaffected by this First Amendment.

### **3. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO REQUIRE CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS**

3.1 Modifications to Conceptual Phasing Plan. Section 3.4 of the Original Development Agreement is hereby amended to read as follows:

“3.4 Conceptual Phasing Plan. Development of the Property is contingent, in part, on the phasing of area-wide infrastructure improvements over which the OWNER has limited control. Attached hereto as Exhibit “E” is a Conceptual Phasing Plan which is based on the OWNER’s best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER’s business judgment as set forth in the Original Development Agreement.

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

3.4.2 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the “Francis Zone Water Loop.” OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builders or others. CITY agrees that OWNER may initiate grading after recordation of the Final Tract Map; however, OWNER acknowledges and agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the extension of permanent master planned potable and recycled water utility infrastructure to serve the Project.

3.4.3 OWNER agrees that development of the Property shall require the construction of a portion of Mill Creek, Bellegrave and Eucalyptus Avenues, all as shown on Exhibit F. OWNER shall be responsible for the construction of the master planned street and related improvements in Mill Creek, Eucalyptus and Bellegrave Avenues all as shown on Exhibit F. OWNER also agrees that OWNER shall be required to construct signalized intersection improvements at the intersections of Eucalyptus and Mill Creek Avenues, Mill Creek and Bellegrave Avenues and Eucalyptus Avenue and "B" Street, and OWNER shall be required to construct the intersection improvements at these intersections as shown on Exhibit F."

3.4.4 OWNER agrees that development of the Property shall require the construction of master planned sewer system improvements in Bellegrave and Merrill Avenues from Mill Creek Avenue to Archibald Avenue and OWNER shall be responsible for the construction of such master planned sewer system improvements as shown on Exhibit F. OWNER also agrees that OWNER shall be responsible for the construction of master planned sewer system improvements in Eucalyptus Avenue from Milliken Avenue to Mill Creek Avenue and in Mill Creek Avenue from Eucalyptus Avenue to Bellegrave Avenue as shown on Exhibit F.

3.4.5 OWNER agrees that development of the Property shall require the construction of master planned storm drain system improvements including the connection to the Countyline Channel and OWNER shall be responsible for the construction of such master planned storm drain system improvements as shown on Exhibit F. OWNER shall also be responsible for the construction of master planned storm drain system improvements in Eucalyptus and Mill Creek Avenues to Bellegrave Avenue as shown on Exhibit F.

3.4.6 CITY and OWNER agree that 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 (the "Phase 2 Recycled Water Improvements") to serve the Project as described in the attached Exhibit F. 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 Phase 2 Recycled Water Improvements and OWNER shall provide evidence acceptable to CITY that OWNER has deposited such capital contribution with NMC Builders. If OWNER has not deposited such amount or if NMC Builders has not initiated construction of the Phase 2 Recycled Water System Improvements prior to September 1, 2018, OWNER shall initiate and complete construction 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 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 the Phase 2 Recycled Water System Improvements is

completed. If NMC Builders LLC or others have completed the design and initiated construction of the required Phase 2 Recycled Water System Improvements prior to 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 4.2.5.1.

3.2 Requirements for the Construction of Public Infrastructure and Improvements. The following provisions shall be added to Section 3.7 Public Works; Utilities of the Original Development Agreement:

“3.7.1 OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit “F” and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY’s granting of the first building permit for any units for the Project, except the maximum number of Twelve\_(12) Model Units.

3.7.1.1 Construction of Model Units prior to Construction of the Interim Units and Production Units. Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of Twelve (12) Model Units and other temporary sales facilities, City may issue a maximum of Twelve (12) building permits for Model Units. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection including a connection to permanent, master planned water facilities including connections and other public health and safety requirements for the Model Units.”

3.3 Modifications to Section 4.2 of the Original Development Agreement. Section 4.2.1, 4.2.2 and 4.2.3 of the Original Development Agreement shall be amended to read as follows:

“4.2.1 Amount of Development Impact Fee. Development Impact Fees shall be paid by OWNER, and any credit and/or reimbursement shall be provided to OWNER, in accordance with Section 3.1 of the Construction Agreement Amendment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of a building permit for each applicable residential or other unit, except for Development Impact Fees and Open Space and Habitat Acquisition Development Impact fees which shall be paid by OWNER to CITY prior to the issuance of a grading permit.”

4.2.3 Parkland and Quimby Act Fees Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. CITY and OWNER agree that lettered Lots of Tract Nos. 17931 and 17932 consisting of approximately 2.22 net acres shall satisfy OWNER's additional park development requirement. Areas designated as Park areas shall be transferred to a homeowners' association and the homeowners' association shall be responsible for all maintenance of the developed park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

Additionally, Sections 4.2.4 and 4.2.5 of the Original Development Agreement shall be removed and replaced by the following:

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

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

4.2.5.1 CITY Reimbursement for Phase 2 Recycled Water System Improvements. If NMC Builders LLC or another

developer does not complete the design and construction of the Phase 2 Recycled Water Improvements prior to September 1, 2019 and OWNER constructs the Phase 2 Recycled Water Improvements then, 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 by OWNER and acceptance by CITY of the Phase 2 Recycled Water System Improvements to the extent such improvements are constructed by OWNER. The amount of the reimbursement shall be thirty-two and six tenths percent (32.6%) of the eligible design and construction costs for the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time the estimated eligible costs for the design and construction of this portion of the Phase 2 Recycled Water System Improvements is two million, four hundred fifty-five thousand dollars (\$2,455,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY's DIF Program for the improvements, whichever is less.

#### **4. OTHER MODIFICATIONS.**

4.1 Assignment and Assumption. CITY and OWNER acknowledge that Armada Ontario Development L.L.C. (Armada Ontario) has transferred the Property to OWNER and has transferred and assigned to OWNER, all rights, title and interest to the Property. OWNER hereby expressly and unconditionally assumes all the rights, duties and obligations of Armada Ontario as the predecessor in interest to OWNER under the Original Development Agreement, including, without limitation, all of the general rights, duties and obligations of Armada Ontario under the Original Development Agreement for the development of the Property. OWNER agrees to observe and fully perform all of Armada Ontario's and OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof, it being the express intention that OWNER, upon execution of this First Amendment, shall become substituted for Armada Ontario as the "OWNER" under the Original Development Agreement, the First Supplemental Memorandum, and this First Amendment.

4.2 Release of Assignor. Pursuant to section 2.4.2 of the Original Development Agreement, Armada Ontario, as the previous OWNER shall be free from any and all liabilities accruing on or after the date of the transfer of title to the Property with respect to the Development Agreement. No breach or default under this First Amendment or the Development Agreement by the current OWNER shall be attributed to Armada Ontario, as the previous OWNER.



4.3 Assignment and Assumption by Successor Owner. CITY and OWNER acknowledge that OWNER expects to transfer the Property to a successor OWNER prior to the completion of the approval process for, and the execution of, this First Amendment. If current OWNER transfers the Property to a successor OWNER and CITY consents to such transfer under the provisions of Section 2.4 of the Original Development Agreement, prior to the completion of the approval process for this First Amendment then the successor OWNER shall expressly and unconditionally assume, in writing, all the rights, duties and obligations of the current OWNER, Genstar Development Corporation Investments 6 L.P., including, without limitation, all of the general rights, duties and obligations of Genstar Development Corporation Investments 6 L.P. under the Original Development Agreement and this First Amendment for the development of the Property. The successor OWNER shall observe and fully perform all of OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof.

## **5. INTEGRATION.**

5.1 Integration of Previous Understandings and Clarifications. 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, or First Supplemental Memorandum, or both, this First Amendment supersedes such previous document(s). In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement and First Supplemental Memorandum. The Property covered by this First Amendment is as described in the legal description of the Property attached hereto as revised Exhibit B-R. This First Amendment shall be recorded against the Property.

**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 BY AND BETWEEN**  
**THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION**  
**INVESTMENTS 6, L.P..**

**"OWNER"**

**GENSTAR DEVELOPMENT CORPORATION**  
**Investments 6 L.P.,**  
a Delaware limited liability company

By:

By:  
Name:  
Its:

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

**"CITY"**

CITY OF ONTARIO

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

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

ATTEST:

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

APPROVED AS TO FORM:  
BEST, BEST & KRIEGER LLP

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

# CITY OF ONTARIO

*Agenda Report*  
September 2, 2014

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

**SUBJECT: AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN GENSTAR DEVELOPMENT CORPORATION INVESTMENTS – RCCD, L.P., AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS**

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving an amendment (File No. PDA14-004) to the Development Agreement between Genstar Development Corporation Investments – RCCD, L.P., a Delaware Limited Partnership, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC of Ontario, California, and update certain provisions of the existing Development Agreement (File No. PDA06-003).

**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:** The proposed Development Agreement Amendment will update certain provisions of the existing Development Agreement to conform to the Construction Agreement Amendment with NMC Builders, LLC. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. Original Model Colony revenue will not be used to support the New Model Colony development. The Development Agreement and the related tract map conditions require the developer to construct public infrastructure.

**BACKGROUND:** On August 19, 2014, the City Council introduced an ordinance approving an amendment (File No. PDA14-004) to the Development Agreement between Genstar Development

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

Prepared by: Rudy Zeledon  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 09/02/2014

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

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

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

5

Corporation Investments – RCCD, L.P. and the City of Ontario. The original Development Agreement (File No. PDA06-003) was approved by City Council on February 20, 2006, for Tentative Tract Map Nos. 17935 and 17936 within the Esperanza Specific Plan. Genstar Development Corporation Investments – RCCD, L.P., and the City recognized that the financial commitment required for construction in the New Model Colony was substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, a Development Agreement was entered into providing for the development of up to 154 dwelling units. The Development Agreement, approved in February 2007, addressed issues of parkland, public facilities, public services funding, infrastructure and affordable housing.

The Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Incorporation of Tentative Tract Maps 18876 and 18878 (217 residential units and 27.23 acres)
- Continues the requirement for funding of Fire Station No. 9
- Continues the requirement for funding of the Regional Water and Storm Water Treatment Improvements
- Modification of Public Services Funding Fees: Increase the fee from \$1,700/unit to \$1,820/unit due in two installments:
  - (1) \$910/unit with the issuance of the each building permit or within 30 days of City commencing construction of the Fire Station No. 9, whichever occurs first (less previous payment of \$157,675 received by City credited to first installment).
  - (2) \$910 upon issuance of each remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2015.
- Single installment of payment of the Public Services Funding of fifty five cents per square feet of non-residential buildings.
- Modification of School Financing Provisions
- Modifications of the amount of the CFD to finance City services

The Amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements. The Applicant is in the process of selling the property and therefore language has been added to the Development Agreement to allow for the transfer of the property to a successor owner under the provisions of the Development Agreement.

The Development Agreement and the Amendment continue to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the Amendment are as follows:

Term:	Maintains the same term of ten years with a five year option.
Assignment:	Assignable with all terms and conditions applying to the assignee. New provisions are added in the Amendment to recognize and provide City approval of all partial assignments.
Fees:	
Development Impact Fees:	To be paid at current amounts; varies by category (i.e. Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.
Community Facilities District (CFD):	City will cooperate with Owner to form a CFD to reimburse costs of infrastructure construction and maintenance of public facilities.
Parks/Open Space:	Maintains The Ontario Plan (General Plan) requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and recognizes that Ontario Land will construct 2.13 acres of parks and open space and pay a pro-rate fee for the remainder of the park and open space requirements
Housing:	Maintains the provision of affordable housing as required by the General Plan through construction, rehabilitation, or by paying an in-lieu fee.
Schools:	Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.
Termination:	Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

In considering the application at their July 22, 2014 meeting, 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 Commission unanimously (4-0) recommended approval of the Development Agreement Amendment to the City Council.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were reviewed in conjunction with an Addendum to the Esperanza Specific Plan (SCH #2002061047). This application 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 ESPERANZA SPECIFIC PLAN LAND USE MAP

Section 1. EXECUTIVE SUMMARY

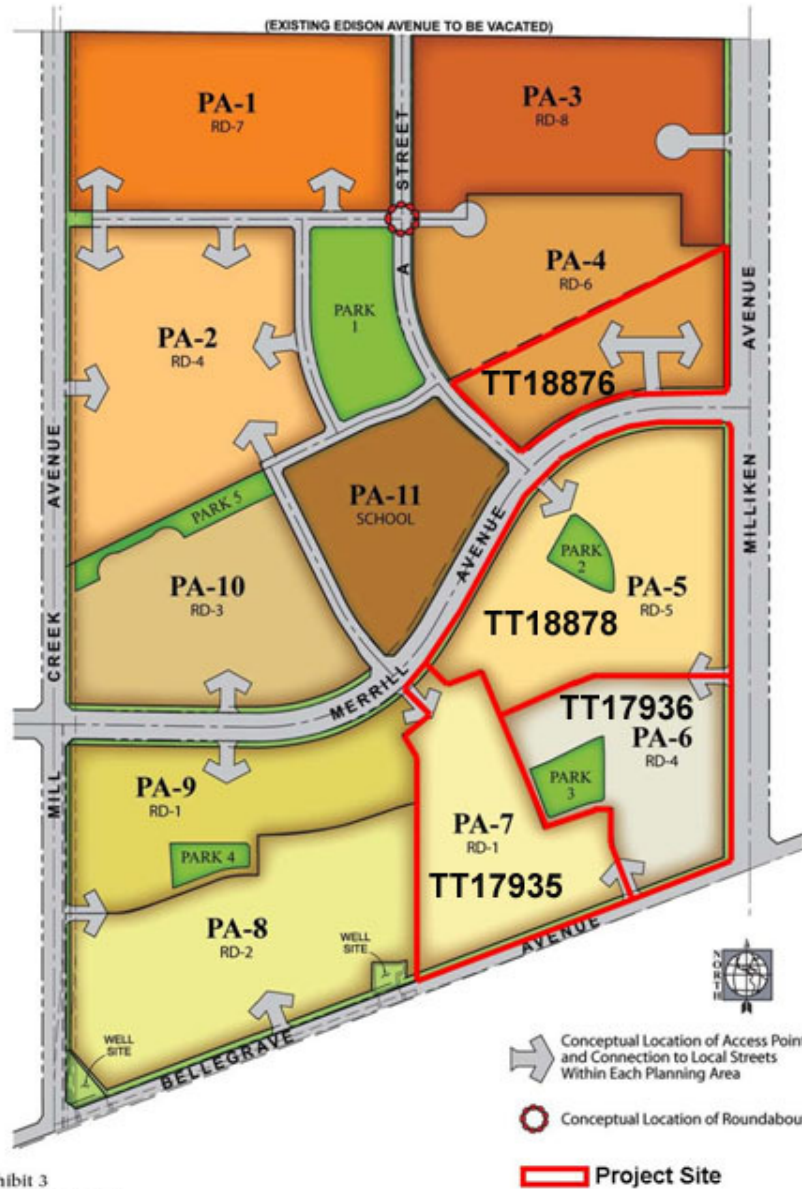


Exhibit 3  
Land Use Plan

Ontario Esperanza Specific Plan

1.5

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION – RCCD L.P., (ESPERANZA SPECIFIC PLAN) (FILE NO. PDA14-004) TO AMEND DEVELOPMENT AGREEMENT, FILE NO. PDA06-003, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM TO THE CONSTRUCTION AGREEMENT WITH NMC BUILDERS, TO INCLUDE THE ADDITIONAL DEVELOPMENT OF UP TO 217 RESIDENTIAL UNITS ON 27.23 ACRES OF LAND, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 17935, 17936, 18876, AND 18778, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-332-11 and 0218-252-17).

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

“The Legislature finds and declares that:

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

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

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

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

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

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



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

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

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

WHEREAS, on the 20<sup>th</sup> day of February 2006, the City Council of the City of Ontario, adopted Ordinance No. 2856, approving a Development Agreement between Regent Ontario, LLC, and the City; and

WHEREAS, on June 24, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date and continued the Project to the July 22, 2014 hearing; and

WHEREAS, on July 22, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date. After considering all public testimony, the Planning Commission recommended approval of the Development Agreement Amendment to the City Council with a vote of 4 to 0 (Gage absent, Gregorek recusing); and

WHEREAS, attached to this Ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between Genstar Development Corporation – RCCD L.P., and the City of Ontario, File No. PDA14-004. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Amendment”; and

WHEREAS, as the first action on the Project, on August 19, 2014, the City Council adopted an Addendum to Esperanza Specific Plan Environmental Impact Report (SCH #2004071001) adopted by the City Council on January 16, 2007. This application 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, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED 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 August 19, 2014, 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 91.07 acres of residential land within Planning Areas 4, 5, 6, and 7 of the Esperanza Specific Plan, generally located on northwest and southwest corners of Mill Creek Avenue and Eucalyptus Avenue and is presently vacant; and

b. The properties to the north of the Project site are within Planning Area 4 of Esperanza Specific Plan and planned for single family development and developed dairy/agriculture uses. The property to the south of the project site is within the City of Eastvale and developed with single family residential development. The property to the east is within the City Eastvale and developed with industrial uses. The property to west is located within Planning Area 4 of Esperanza Specific Plan and planned for single family development and currently vacant; and

c. The Development Agreement and the Amendment to the Development Agreement establishes parameters for the development of Esperanza Specific Plan residential projects. The Development Agreement also grants Genstar Development Corporation – RCCD L.P., a Delaware limited partnership 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

d. The Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders (“NMC”), LLC; and

e. The Amendment to the Development Agreement will provide for the phasing of various improvements established by Esperanza Specific Plan; and

f. 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

g. 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

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

i. 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 but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in The Avenue Specific Plan EIR certified by the City Council on December 19, 2006.

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 2<sup>nd</sup> day of September, 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

(SEAL)

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 August 19, 2014, and adopted at the regular meeting held September 2, 2014, by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. \_\_\_\_\_ duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014 and that Summaries of the Ordinance were published on August 26, 2014 and September 9, 2014, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

Exhibit A – First Amendment to the Development Agreement  
(See Attached)

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND  
BETWEEN THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT  
CORPORATION - RCCD , L.P. (ESPERANZA EAST)**

This First Amendment (hereinafter "First Amendment") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 201\_ by and between the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Genstar Development Corporation -RCCD L.P., a Delaware limited partnership (hereinafter "OWNER").

**RECITALS**

WHEREAS, the CITY and the previous Owner, Regent Ontario L.L.C. ("Regent Ontario") previously entered into that certain Regent Ontario (Esperanza) Development Agreement (No. PDA 06-003) dated February 20, 2007 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement"); and

WHEREAS, the current OWNER, Genstar Development Corporation – RCCD L.P. (Esperanza East) named above as OWNER, has acquired the Property from the previous Owner on December 10, 2010; and

WHEREAS, under the terms of the sale and transfer of the Property, to OWNER, OWNER has been assigned and has expressly and unconditionally assumed all the rights, duties and obligations of Regent Ontario under the Development Agreement, including, without limitation, all of the general rights, duties and obligations of OWNER under the Development Agreement; and

WHEREAS, OWNER has requested that the CITY approve the transfer and assignment of the "Original Development Agreement" from Regent Ontario; 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, the CITY and NMC Builders, LLC, a California limited liability company ("NMC Builders"), entered into that certain Agreement for the Financing and Construction of Phase I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony dated October 4, 2005, which is referred to both herein and in the Development Agreement as the "Construction Agreement;" and

WHEREAS, the CITY and NMC Builders have entered into the Amended and Restated Construction Agreement dated August 21, 2012 that supersedes and replaces the Construction Agreement (the "Construction Agreement Amendment"); and

WHEREAS, NMC Builders LLC is identified as the Developer under the Construction Agreement Amendment; and

WHEREAS, OWNER is a member of NMC Builders and is a "Member" as such term is defined in the Construction Agreement Amendment; and

WHEREAS, the CITY and OWNER agree that execution of this First Amendment shall constitute CITY's approval of the assignment of the Development Agreement to Genstar Development Corporation - RCCD L.P. (Esperanza East) and a Certification of Agreement Compliance under Section 6.4 of the Development Agreement shall be issued within 10 days following the Effective Date of this First Amendment; and

WHEREAS, the current OWNER expects to transfer the Property to a successor OWNER under the provisions of Section 2.4 of the Original Development Agreement prior to completion of the process required for the adoption of the Ordinance to approve this First Amendment and it is expected that OWNER and the successor OWNER will execute the necessary assignments and assumptions as required by the Original Development Agreement.

## **AGREEMENTS**

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

### **1. DEFINITIONS AND EXHIBITS.**

1.1 Existing Definitions. The following terms when used in this First Amendment shall have the same meaning as defined in the Original Development Agreement: "CITY"; "Construction Agreement"; "Development"; "Development Approvals"; "Development Exaction"; "Development Impact Fee"; "Development Plan"; "General Plan"; "Land Use Regulations"; "OWNER"; "Project", "Property", "Specific Plan"; "Subsequent Development Approvals"; and "Subsequent Land Use Regulations".

#### **1.2 Additional and Modified Definitions.**

1.2.1 The following additional terms shall be defined as follows:

"Construction Agreement Amendment" means that certain Amended and Restated Agreement for the Financing and Construction of Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders dated August 21, 2012.



“Effective Date” means the date that the ordinance adopting this First Amendment becomes effective.

“Model Units” means a maximum of sixteen (16) units constructed by OWNER prior to the construction of any Production Units and not offered for sale and occupancy until after all of the of the building permits for Production Units are issued.

“OWNER” means Genstar Development Corporation - RCCD L.P., a Delaware limited liability partnership as successor in interest to Regent Ontario L.L.C, a Delaware Limited Liability Corporation.

“Owner’s Fire Station No. 9 Capital Contribution” is added to mean OWNER’s share, calculated on a per-unit basis under the provisions of the Construction Agreement Amendment and the NMC Builders LLC’s agreements, for the costs of the completion of the design and construction of Fire Station No. 9, as estimated by CITY.

“Phase 1 Recycled Water System Improvements” means the extension of the recycled water system to serve the Property in Eucalyptus, Milliken and Edison Avenues as described in the attached Exhibit F.

“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 F.

“Production Units” means all units constructed for sale and occupancy by OWNER but excludes the maximum sixteen (16) Model Units constructed by OWNER for promotion of sales.

“Storm Water Capacity Availability Equivalents” means a designated portion of the total Storm Water Capacity Availability made available through the completion of construction of each Phase of regional storm water treatment facilities by the NMC Builders. OWNER shall be required to provide evidence of sufficient Storm Water Capacity Availability Equivalents (or portions thereof) based upon the storm water generation factors and assumptions contained in the Construction Agreement Amendment.

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

1.2.2 The following definitions shall be revised as follows:

“Existing Development Approvals” is revised to mean all Development Approvals approved or issued prior to the Effective Date of this Amendment. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit “C-R” and all other Development Approvals that are a matter of public record on the Effective Date of this Amendment.

“Existing Land Use Regulations” is revised to mean all Land Use Regulations in effect on the Effective Date of this Amendment and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D-R,” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment.

“Improvement” or “Improvements” is revised to mean those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract Nos.17749 (A Map), 17935, 17936, and 18876 and 18878 (B Maps) and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.3 Exhibits. The following documents are attached to, and by this reference made a part of, this First Amendment:

Exhibit “C-R” –Revised Existing Development Approvals

Exhibit “D-R” – Revised Existing Land Use Regulations

Exhibit “F” — Infrastructure Improvements Exhibit

## **2. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO CONFORM TO CONSTRUCTION AGREEMENT AMENDMENT**

2.1 Continuing Requirement for the Funding of Fire Station No. 9 by NMC Builders for Issuance of Building Permits. The issuance of building permits for Production Units within the Property is contingent upon, among other things, the provision of payments from NMC Builders for the completion of the construction of CITY’s Fire Station No. 9. Except as provided in section 2.2 below, CITY shall not issue building permits for the construction of Production Units within the Property unless and until CITY receives payments from NMC Builders in the amount estimated by CITY to be necessary and sufficient for the completion of the design and construction of Fire Station No. 9.

2.2 Fire Station Funding Requirements for Any permits Issued Prior to the Provision of Payments from NMC Builders for the Completion of Construction of CITY’S Fire Station No. 9. If OWNER requests that CITY issue building permits for any Model

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

2.3 Continuing Requirement for the Funding of Regional Water and Storm Water Treatment Improvements. Prior to, and as a condition precedent to CITY's approval of the final Tract Map for Tract Nos. 17749, 17935, 17936, 18876 and 18878, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for all Model Units and Production Units to be constructed on the Property. Prior to, and as a condition precedent to CITY's issuance of grading permits for any grading of the Property or prior to, and as a condition precedent to CITY's approval of the final Tract Map for Tract Nos. 17749, 17935, 17936, 18876 or 18878, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the Project. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project as defined in the Construction Agreement Amendment and as of the Effective Date of this Amendment such net acreage has been determined to be 54.45 acres. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER may provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

2.4 Modification of Public Services Funding Fees. As required by Section 4.6 of the Original Development Agreement and in order to ensure that the adequate provision of public services, including without limitation, police, fire, and other public safety services, is available to residents and occupants of OWNER's Project, OWNER shall provide a "Public Services Funding Fee." OWNER was required and has paid, the First Installment of the Public Service Funding Fees to CITY in the amount of one hundred fifty seven thousand six hundred seventy-five dollars (\$157,675). CITY and OWNER agree that OWNER is not in compliance with the provisions of Section 4.6 of the Original Development Agreement and under the provisions of Section 3.7.4 of the Construction Agreement Amendment the amount of the Public Services Funding Fees, the amount of the optional installment payments and the timing of the optional installment payments shall be subject to modification. The provisions of Section 4.6 of the Original Development Agreement shall be superseded and replaced with the following:

"4.6 Public Services Funding Fee. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Eight Hundred Twenty dollars (\$1,820.00) per residential dwelling unit. OWNER shall pay the Public Services Funding Fee in one (1) installment within one hundred eighty (180) calendar days after the Effective Date of this First Amendment, or, at OWNER's option, in two (2) installments as follows:

4.6.1 First Installment (Residential uses). The first installment of the Public Services Funding Fee shall be Nine Hundred Ten dollars (\$910.00) per residential dwelling unit. The first installment shall be paid prior to, and as a condition precedent to the issuance of each building permit unless, CITY commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project (in which case the following payment structure shall apply). If CITY commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project, the first installment shall be based upon the "Maximum Development Density" of OWNER's Project, or the number of units described on "B Maps" if approved, as defined in Section 3.7.2.3 of the Construction Agreement Amendment. The first installment shall then be due and payable no later than 30 days following CITY's commencement of construction of Fire Station No. 9. Commencement of the construction shall be defined as the issuance of a grading permit or building permits, whichever, occurs first.

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

4.6.2 Second Installment (Residential Uses). The second installment of the Public Services Funding Fee shall be Nine Ten Hundred dollars (\$910.00) per residential unit. The second installment shall be paid by OWNER at the time of the issuance of each building permit for the Project. The amount of the second installment shall increase automatically by the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Riverside- Orange-County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2015. OWNER may exercise the option to pay the second installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within the Project on or before each December 31st, before the second installment amount is automatically increased.

4.6.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty Five Cents (\$.55) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of each building permit for each non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles—Riverside-Orange-County), 1950-2001 (1982-84=100) over each preceding year

on January 1<sup>st</sup> of each year, beginning on January 1, 2015. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.”

2.4.1 Public Services Funding Fees – Credit for Fee Amounts Previously Received by City. CITY and OWNER agree that CITY shall reduce the total amount of First Installment amount of the Public Services Funding Fees by four hundred twenty-five dollars per dwelling unit to recognize the portion of the First Installment amount previously paid to CITY by OWNER. Such reduction may be taken from the amount of the total fee amount due within one hundred eighty (180) calendar days after the Effective Date of this First Amendment, or, at OWNER’s option, from the amount of the First Installment due and payable at issuance of building permit but not later than 30 days following CITY’s commencement of construction of Fire Station No. 9. The escalation provisions of Section 4.6.1 shall continue to apply to full First Installment amount and the credit amount for previous payments shall remain at four hundred twenty-five dollars (\$425.00) and shall not be escalated.

2.5 Modification of School Financing Provisions. The provisions of Section 5.2 School Financing. of the Original Development Agreement shall be superseded and replaced with the following:

5.2 Schools. CITY and OWNER agree that OWNER, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met its school obligations may be required by the CITY as a condition to the issuance by the City of any entitlements for OWNER’s Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), CITY shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 5.2.”

2.6 Modification of the Amounts of the CFD to Finance City Services. Prior to, and as a condition precedent to, the recordation of any final subdivision map, the area covered by such map shall be included in a Community Facilities District (CFD) to finance City services through annual special taxes. The amounts contained in Section 5.1 Financing Mechanism(s) in the Original Development Agreement shall be modified as follows:

Single Family Detached Dwelling Unit to \$1,387.00

Multiple Family Dwelling Unit to \$1,202.00

Gated Apartment Community Dwelling Unit to \$1,008.00

Non-Residential buildings to \$.26 per square foot.

These modified amounts shall be subject to an automatic increase, not to exceed four (4%) percent per year, beginning on January 1, 2015.

2.7 Remaining Provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS All other provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS shall continue and shall be unaffected by this First Amendment.

### **3. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO REQUIRE CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS**

3.1 Modifications to Conceptual Phasing Plan. Section 3.4 of the Original Development Agreement is hereby amended to read as follows:

“3.4 Conceptual Phasing Plan. Development of the Property is contingent, in part, on the phasing of area-wide infrastructure improvements over which the OWNER has limited control. Attached hereto as Exhibit “E” is a Conceptual Phasing Plan which is based on the OWNER’s best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER’s business judgment as set forth in the Original Development Agreement.

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

3.4.2 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the “Francis Zone Water Loop.” OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builders or others. CITY

agrees that OWNER may initiate grading after recordation of the Final Tract Map; however, OWNER acknowledges and agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the extension of permanent master planned potable and recycled water utility infrastructure to serve the Project.

3.4.3 OWNER agrees that development of the Property shall require the construction of a portion of Milliken, Mill Creek, Bellegrave and Eucalyptus Avenues, all as shown on Exhibit F. OWNER shall also be responsible for the construction of the master planned street and related improvements in Milliken, Mill Creek, Bellegrave and Eucalyptus Avenues. OWNER also agrees that OWNER shall be required to construct signalized intersection improvements at the intersections of Bellegrave and Milliken Avenues, Milliken and Eucalyptus Avenues and Eucalyptus Avenue and "A" Street as shown on Exhibit F."

3.4.4 OWNER agrees that development of the Property shall require the construction of master planned sewer system improvements in Bellegrave and Merrill Avenues from Mill Creek Avenue to Archibald Avenue and OWNER shall be responsible for the construction of such master planned sewer system improvements as shown on Exhibit F. OWNER also agrees that OWNER shall be responsible for the construction of master planned sewer system improvements in Eucalyptus Avenue from Milliken Avenue to Mill Creek Avenue and in Mill Creek Avenue from Eucalyptus Avenue to Bellegrave Avenue as shown on Exhibit F.

3.4.5 OWNER agrees that development of the Property shall require the construction of master planned storm drain system improvements in Milliken Avenue from north of Eucalyptus Avenue to Bellegrave Avenue, and including the connection to the Countyline Channel and OWNER shall be responsible for the construction of such master planned storm drain system improvements as shown on Exhibit F. OWNER shall also be responsible for the construction of master planned storm drain system improvements in Mill Creek Avenue from to Eucalyptus Avenue to Bellegrave Avenue and in Eucalyptus Avenue along the Property frontage to Bellegrave Avenue and the Countyline Channel all as shown on Exhibit F.

3.4.6 OWNER agrees that development of the Property shall require the construction of two phases of permanent master planned recycled water utility infrastructure to serve the Property with recycled water from two identified sources. OWNER shall be responsible for the design and construction of the necessary extension of permanent master planned recycled water utility infrastructure to the Property from Archibald Avenue, (the "Phase 1 Recycled Water Improvements") as described in the attached Exhibit F prior to, and as a condition precedent to, the issuance of the first building permit for Production Units. OWNER acknowledges and agrees that no building permits for Production Units shall be issued by CITY for the Project prior to the completion of the Phase 1 Recycled Water Improvements on Archibald and Edison Avenues and on

Eucalyptus and Milliken Avenues to serve the Project, as described in the attached Exhibit F.

3.4.7 CITY and OWNER agree that 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 (the "Phase 2 Recycled Water Improvements") to serve the Project as described in the attached Exhibit F. 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 Phase 2 Recycled Water Improvements and OWNER shall provide evidence acceptable to CITY that OWNER has deposited such capital contribution with NMC Builders. If OWNER has not deposited such amount, or if NMC Builders has not initiated construction of the Phase 2 Recycled Water System Improvements prior to September 1, 2018, OWNER shall initiate and complete construction 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 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 the Phase 2 Recycled Water System Improvements is completed. If NMC Builders LLC or others have completed the design and initiated construction of the required Phase 2 Recycled Water System Improvements prior to 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 4.2.5.1.

3.2 Requirements for the Construction of Public Infrastructure and Improvements. The following provisions shall be added to Section 3.7 Public Works; Utilities of the Original Development Agreement:

"3.7.1 OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for any units for the Project, except the maximum number of sixteen(16) Model Units.

3.7.1.1 Construction of Model Units prior to Construction of the Interim Units and Production Units. Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of sixteen (16) Model Units and other temporary sales facilities, CITY may issue a maximum of sixteen (16) building permits for Model Units. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection including a connection to permanent, master planned water



facilities including connections and other public health and safety requirements for the Model Units.”

3.3 Modifications to Section 4.2 of the Original Development Agreement. Section 4.2.1, 4.2.2 and 4.2.3 of the Original Development Agreement shall be amended to read as follows:

“4.2.1 Amount of Development Impact Fee. Development Impact Fees shall be paid by OWNER, and any credit and/or reimbursement shall be provided to OWNER, in accordance with Section 3.1 of the Construction Agreement Amendment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of a building permit for each applicable residential or other unit, except for Development Impact Fees and Open Space and Habitat Acquisition Development Impact fees which shall be paid by OWNER to CITY prior to the issuance of a grading permit.”

4.2.3 Parkland and Quimby Act Fees Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City’s park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from CITY. CITY and OWNER agree that the lettered Lots within Tract Nos. 17935 18876 and 18878 consisting of approximately 2.86 net acres shall satisfy OWNER’s additional park development requirement. Areas designated as Park areas shall be transferred to a homeowners’ association and the homeowners’ association shall be responsible for all maintenance of the developed park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

Additionally, Sections 4.2.4 and 4.2.5 of the Original Development Agreement shall be removed and replaced by the following:

“4.2.4 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY’s Development Impact Fee Program and the Construction Agreement Amendment, CITY agrees that CITY shall issue DIF Credit (as defined in the Construction Agreement Amendment) in accordance with the provisions of the Construction Agreement Amendment and any amendments thereto. Use of DIF Credit issued to OWNER

as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement Amendment and any amendments thereto.

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

4.2.5.1 CITY Reimbursement for Phase 2 Recycled Water System Improvements. If NMC Builders LLC or another developer does not complete the design and construction of the Phase 2 Recycled Water Improvements prior to September 1, 2019 and OWNER constructs the Phase 2 Recycled Water Improvements then, 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 by OWNER and acceptance by CITY of the Phase 2 Recycled Water System Improvements to the extent such improvements are constructed by OWNER. The amount of the reimbursement shall be Thirty-two and six tenths percent (32.6%) of the eligible design and construction costs for the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time the estimated eligible costs for the design and construction of this portion of the Phase 2 Recycled Water System Improvements is two million, four hundred fifty-five thousand dollars (\$2,455,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY's DIF Program for the improvements, whichever is less.

#### **4. OTHER MODIFICATIONS.**

4.1 Assignment and Assumption. CITY and OWNER acknowledge that Regent Ontario L.L.C. (Regent Ontario) has transferred the Property to OWNER and has transferred and assigned to OWNER, all rights, title and interest to the Property. OWNER hereby expressly and unconditionally assumes all the rights, duties and obligations of Regent Ontario as the predecessor in interest to OWNER under the Original Development Agreement, including, without limitation, all of the general rights, duties and obligations of Regent Ontario under the Original Development Agreement for the development of the Property. OWNER agrees to observe and fully perform all of Regent Ontario's and OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof, it being the express intention that OWNER, upon execution of this First Amendment, shall become substituted for Regent Ontario as the "OWNER" under the Original Development Agreement and this First Amendment.

4.2 Release of Assignor. Pursuant to section 2.4.2 of the Original Development Agreement, Regent Ontario, as the previous OWNER shall be free from any and all liabilities accruing on or after the date of the transfer of title to the Property with respect to the Development Agreement. No breach or default under this First Amendment or the Development Agreement by the current OWNER shall be attributed to Regent Ontario, as the previous OWNER.

4.3 Assignment and Assumption by Successor Owner. CITY and OWNER acknowledge that OWNER expects to transfer the Property to a successor OWNER prior to the completion of the approval process for, and the execution of, this First Amendment. If current OWNER transfers the Property to a successor OWNER and CITY consents to such transfer under the provisions of Section 2.4 of the Original Development Agreement, prior to the completion of the approval process for this First Amendment then the successor OWNER shall expressly and unconditionally assume all the rights, duties and obligations of the current OWNER, Genstar Development Corporation-RCCD L.P., including, without limitation, all of the general rights, duties and obligations of Genstar Development Corporation-RCCD L.P. under the Original Development Agreement and this First Amendment for the development of the Property. The successor OWNER shall observe and fully perform all of OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof.

#### **5. INTEGRATION.**

5.1 Integration of Previous Understandings and Clarifications. 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 Original Development Agreement, this First Amendment supersedes the Original Development Agreement. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Original Development Agreement. The Property covered by this First

Amendment is as described in the legal description of the Property attached hereto as revised Exhibit B-R. This First Amendment shall be recorded against the Property.

**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 BY AND BETWEEN**  
**THE CITY OF ONTARIO AND GENSTAR DEVELOPMENT CORPORATION - RCCD,**  
**L.P.**

**"OWNER"**

**Genstar Development Corporation- RCCD L.P.,**  
a Delaware limited liability company

By:  
Name:  
Its:

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

**"CITY"**

CITY OF ONTARIO

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

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

ATTEST:

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

APPROVED AS TO FORM:  
BEST, BEST & KRIEGER LLP

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

# CITY OF ONTARIO

*Agenda Report*  
September 2, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, THE ANKER FAMILY DECEDENT'S TRUST, AND NEW CINGULAR WIRELESS PCS, LLC, FOR THE CONTINUED USE OF A TELECOMMUNICATIONS FACILITY**

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA14-005), which allows for the continued use of an existing telecommunications facility located at 13524 South Grove Avenue (APN: 1052-481-02) within the future right-of-way of Grove Avenue; and establishing standards for its future removal/relocation.

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

**FISCAL IMPACT:** There are no direct fiscal impacts to the City of Ontario as a result of the Development Agreement terms and conditions. All costs are to be borne by New Cingular Wireless PCS, LLC.

**BACKGROUND:** On August 19, 2014, the City Council introduced an ordinance approving a Development Agreement (File No. PDA14-005) which allows for the continued use of an existing telecommunications facility. In 2004, AT&T was given permission to place antennas on an existing Southern California Edison (SCE) tower at the south end of the site. In 2010, the antennas were removed from the SCE tower and relocated onto a temporary facility to allow for SCE upgrades on their towers. Upon completion of the tower upgrades, another carrier located on the tower previously occupied by AT&T antennas at the height required by AT&T. Additionally, the other nearby SCE towers are outside of the area covered by the AT&T facility. As a result, AT&T has requested to continue use of the

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

Prepared by: Clarice Burden  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 09/02/2014

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

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

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

6

existing temporary monopole facility. The existing monopole is located within the future right-of-way and neighborhood edge of Grove Avenue.

The proposed Development Agreement would allow the existing telecommunications facility to remain within the future right-of-way and neighborhood edge of Grove Avenue until such time as the street needs to be widened. Upon notification by the City of plans to widen Grove Avenue (one year notice), AT&T is required to remove or relocate the telecommunications facility at their expense.

On July 22, 2014, the Planning Commission reviewed the proposed Development Agreement and unanimously (5-0) voted to recommend that the City Council adopt a resolution approving a Mitigated Negative Declaration and adoption of an ordinance approving the proposed Development Agreement. Furthermore, the Planning Commission approved a Development Plan (File No. PDEV13-009), Conditional Use Permit (File No. PCUP13-003), and Variance (File No. PVAR13-004), to allow the continued use of a 65-foot tall monopole within the future right-of-way and neighborhood edge of Grove Avenue. Final approval of the applications is contingent upon City Council approval of the Mitigated Negative Declaration and Development Agreement.

**ENVIRONMENTAL REVIEW:** The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (CEQA) and an initial study has been prepared to determine possible environmental impacts. On the basis of the initial study, which indicated that all potential environmental impacts from the project were less than significant or could be mitigated to a level of insignificance, a Mitigated Negative Declaration was prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines. Furthermore, to ensure that the mitigation measures are implemented, a Mitigation Monitoring and Reporting Program has been prepared for the project pursuant to CEQA Guidelines Section 15097, which specifies responsible agencies/departments, monitoring frequency, timing and method of verification, and possible sanctions for non-compliance with mitigation measures. The environmental documentation for this project is available for review at the Planning Department public counter.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA14-005, A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, A CALIFORNIA MUNICIPAL CORPORATION, THE ANKER FAMILY DECEDENT'S TRUST, AND NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE FUTURE REMOVAL/RELOCATION OF TELECOMMUNICATION EQUIPMENT FROM THE CURRENT/FUTURE RIGHT-OF-WAY OF GROVE AVENUE IN CONJUNCTION WITH A DEVELOPMENT PLAN (FILE NO. PDEV13-009), CONDITIONAL USE PERMIT (FILE NO. PCUP13-003), AND VARIANCE (FILE NO. PVAR13-004) TO ALLOW THE CONTINUED USE OF A 65-FOOT TALL MONOPOLE TELECOMMUNICATIONS FACILITY AT 13524 SOUTH GROVE AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1052-481-02.

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

“The Legislature finds and declares that:

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

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

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

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

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

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or



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

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

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

WHEREAS, attached to this ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Development Agreement by and between the City of Ontario, a California municipal corporation, The Anker Family Decedent’s Trust, and New Cingular Wireless PCS, LLC, a Delaware limited liability company; and

WHEREAS, the Application applies to property located on the west side of Grove Avenue between Chino Avenue and Schaefer Avenue with a street frontage of 660 feet and a lot depth of 627 feet and is presently improved with a farm/ranch; and

WHEREAS, the project includes a Development Plan (File No. PDEV13-009) to continue use of the existing telecommunications facility, a Conditional Use Permit (File No. PCUP13-004) to operate the telecommunications facility and a Variance (File No. PVAR13-004) to allow the facility to exceed the maximum 35-foot height limitation of the SP(AG) zone, all of which are contingent upon City Council approval of the Development Agreement for the future relocation/removal of the facility; and

WHEREAS, the existing telecommunications facility lies within the ultimate right-of-way and neighborhood edge for Grove Avenue, as indicated in The Ontario Plan Master Plan of Streets, and the New Model Colony Streetscape Master Plan; and

WHEREAS, the Development Agreement specifies the terms and conditions under which the telecommunications facility may remain within the ultimate right-of-way and neighborhood edge of Grove Avenue and provides for the future removal/relocation of the facility; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (“CEQA”) and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, as the first action on the Project, on July 22, 2014, the Planning Commission recommended that City Council approve a Mitigated Negative Declaration (“MND”) and Mitigation Monitoring and Reporting Program, prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of insignificance; and

WHEREAS, the project site is located within the Airport Influence Area of Ontario International Airport and the Project is consistent with the policies and criteria set forth within the Airport Land Use Compatibility Plan; and

WHEREAS, on July 22, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and issued Resolution No PC14-061 recommending that City Council approve the project; and

WHEREAS, as the first action on the Project, on August 19, 2014, the City Council approved a resolution adopting a Mitigated Negative Declaration of environmental effects, and all adopted mitigation measures are incorporated into the Project by reference; and

WHEREAS, on August 19, 2014, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED 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 22, 2014, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies a 1,010 square foot lease area on 9.5 acres of land located at 13524 South Grove Avenue which is located on the west side of Grove Avenue between Chino Avenue and Schaefer Avenue and is presently improved with a farm/ranch; and

b. The properties to the north, south, east, and west of the Project site are similarly developed and lie within the SP(AG) zone; and

c. The Development Agreement establishes parameters for the future removal of telecommunication equipment from the ultimate right-of-way and neighborhood edge of Grove Avenue. These terms and conditions are consistent with The Ontario Plan Policy plan (General Plan), design guidelines and development standards of the Development Code; and

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

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

g. The Development Agreement will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties.

SECTION 2. Based upon the findings and conclusions set forth in Sections 1 above, the City Council 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 2<sup>nd</sup> day of September 2014.

---

PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held August 19, 2014 and adopted at the regular meeting held September 2, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. \_\_\_\_\_ duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014 and that Summaries of the Ordinance were published on August 26, 2014 and September 9, 2014, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

EXHIBIT A

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

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

Exempt from Fees Per Gov. Code § 6301

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Space above this line for Recorder's Use  
Only

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**The Anker Family Decedent's Trust And**

**New Cingular Wireless PCS, LLC, a  
Delaware limited liability company**

**September 2, 2014**

**San Bernardino County, California**

## **DEVELOPMENT AGREEMENT NO. 14-005**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the 2<sup>nd</sup> day of September, 2014, by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and The Anker Family Decedent's Trust (hereinafter "OWNER") and New Cingular Wireless PCS, LLC, a Delaware limited liability company (hereinafter "APPLICANT"):

### **RECITALS**

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project, the Agreement and the Mitigated Negative Declaration ("MND"). The City Council found and determined that the MND was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the MND, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and Development Code hereby incorporated by this reference; and

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

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

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

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

### AGREEMENTS

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

#### 1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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

- (a) development plan review;
- (b) conditional use permits, public use permits, and plot plans;
- (c) zoning;
- (d) grading and building permits.



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

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

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

1.1.8 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date.

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

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.10 “General Plan” means The Ontario Plan adopted on January 27, 2010, by Resolution No. 2010-006.

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

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

1.1.13 “Project” means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified

pursuant to the provisions of this Agreement.

1.1.14 “Property” means the real property described on Exhibit “A” and shown on Exhibit “B” to this Agreement.

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

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

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Conceptual Site Plan

## 2. GENERAL PROVISIONS.

2.1 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof and agrees to the terms of this Agreement and the recordation thereof.

2.2 Applicant. APPLICANT represents and covenants that it has consent from the current fee owner of the Property to process this agreement and agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated pursuant to Section 2.6, unless this term is modified or extended pursuant to the provisions of this Agreement.

### 2.4 Assignment.

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

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868. Any amendment of this Agreement, which amendment has been

requested by OWNER/APPLICANT, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER/APPLICANT as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

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

(a) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(b) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(c) Upon relocation of the pole and all related equipment and appurtenances outside of the Grove Avenue right-of-way and neighborhood edge pursuant to Section 3.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

2.7 Notices.

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

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the

United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Al C. Boling, City Manager  
City of Ontario  
303 East "B" Street  
Ontario, CA 91764

with a copy to:

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

If to OWNER:

The Anker Family Decedent's Trust  
P.O. Box 2617  
Chino, CA 91708  
Attn: John J. Anker

If to APPLICANT:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
RE: ES0342 Anker Property (CA)  
Fixed Asset #: 10151198  
575 Morosgo Drive NE  
Suite 13-F, West Tower  
Atlanta, GA 30324

with a copy to:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
RE: ES0342 Anker Property (CA)  
Fixed Asset #: 10151198  
208 South Akard Street  
Dallas, TX 75202-4206

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

### 3. DEVELOPMENT OF PROPERTY.

3.1 PROJECT DESCRIPTION. APPLICANT is proposing to continue operation of an existing wireless communication facility on property described in Exhibits “A” and “B”. The project consists of a sixty-five foot monopole tower with related equipment enclosure as shown on Exhibit “C”. The facility is proposed 3-feet 4-inches from the existing Grove Avenue right-of-way (approximately 33-feet from the Grove Avenue centerline). The OWNER and APPLICANT have selected this location for tower placement so as not to disrupt the existing use of the Property.

3.2 GROVE AVENUE IMPROVEMENTS. Based on a review of the Assessor’s Parcel Book information for the property, the existing right-of way for Grove Avenue is approximately 33-feet from street centerline. Pursuant to the Functional Roadway Classification contained in the Mobility Element of The Ontario Plan (“TOP”), adopted by CITY in January 2010, Grove Avenue is identified as a four-lane divided arterial with a 124-foot right-of-way, 62-foot half street, in proximity to the project site. Furthermore, the New Model Colony Streetscape Master Plan, adopted by CITY in May 2007, requires a 20-foot landscaped setback (neighborhood edge) behind the right-of-way (40 feet from face of curb). Upon development of the adjoining property, the neighborhood edge will become a lettered lot in favor of CITY and will be maintained by CITY. The combined right-of-way and neighborhood edge for Grove Avenue results in an ultimate width of 164 feet (82-foot half-street section). In that the project proposes locating the cell tower 3-feet 4-inches from the right-of-way line (33-feet from centerline), the tower will be located within the ultimate right-of-way and neighborhood edge of Grove Avenue.

### 3.3 PHASING/TIMING OF DEVELOPMENT.

3.3.1 Based on current traffic demands for Grove Avenue, the current street section of one lane in each direction is sufficient to accommodate existing traffic and a limited amount of future traffic.

3.3.2 As the New Model Colony begins to develop, improvements and widening of Grove Avenue may be necessary to accommodate the additional trips/traffic. As noted in Section 3.2 above, the project will result in the continued operation of a cell tower within the future right-of-way/neighborhood edge of Grove Avenue, necessitating removal or relocation of the facility upon installation of improvements to widen Grove Avenue.

3.3.3 APPLICANT wishes to place the cell tower outside of the existing right-of-way but within the ultimate right-of-way/neighborhood edge to minimize disruption to the existing on-site business being conducted by OWNER. Further, APPLICANT desires to develop the project at the earliest opportunity.

3.3.4 At this time, CITY does not know the timing of improvements to or

widening of Grove Avenue. CITY is willing to allow the project to continue to be located in the ultimate street right-of-way and neighborhood edge so long as CITY maintains its ability to widen the street when the need arises, without interference from the project.

3.3.5 CITY will provide OWNER and APPLICANT with written notice, at least twelve (12) months prior, of CITY's intention to widen Grove Avenue. OWNER/APPLICANT will be responsible for the removal or relocation of the cell tower and related improvements, at OWNER/APPLICANT's sole expense, within the twelve (12) months of notification unless otherwise extended by mutual consent. Failure to remove APPLICANT's facilities within the time period stipulated may result in removal by CITY. If CITY removes APPLICANT's facilities, CITY will bill APPLICANT for any costs incurred as part of the removal and APPLICANT agrees to pay said costs within thirty (30) days of receipt of invoice.

3.3.6 Should APPLICANT wish to relocate their facilities on the same site or another site, APPLICANT may do so at its sole expense. CITY agrees to work with APPLICANT to process the plans necessary to obtain entitlements for the new project. APPLICANT shall be required to comply with all development standards in effect at the time of the new project submittal. Further, CITY is not obligated to approve the new project if it does not comply with the development standards in effect at that time.

#### 4. MISCELLANEOUS PROVISIONS.

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

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

4.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**



**SIGNATURE PAGE  
TO DEVELOPMENT  
AGREEMENT**

**"OWNER"**

By: \_\_\_\_\_  
(Name)

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

**"APPLICANT"**

New Cingular Wireless PCS, LLC, a  
Delaware limited liability company  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Mark Rivera  
Real Estate & Construction

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

**"CITY"**

CITY OF ONTARIO

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

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

ATTEST:

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF STATE

COUNTY OF SAN BERNARDINO

)  
) ss.  
)

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

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

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

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

WITNESS my hand and official seal.

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

(Notary Seal)

### OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
D	Individual	
D	Corporate Officer	
	Title(s)	Title or Type of Document
D	Partner(s)	
	D Limited	
	D General	
D	Attorney-In-Fact	Number Of Pages
D	Trustee(s)	
D	Guardian/Conservator	
D	Other: _____	Date Of Document
Signer is representing: Name Of Person(s) Or Entity(ies)		
_____		Signer(s) Other Than Named Above

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF STATE )  
COUNTY OF \_\_\_\_\_ ) ss.

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

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

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

WITNESS my hand and official seal.

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

\_\_\_\_\_  
(Notary Seal)

### OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
D	Individual	
D	Corporate Officer	
	<small>Title(s)</small>	<small>Title or Type of Document</small>
D	Partner(s)	
	D Limited	
	D General	
D	Attorney-In-Fact	<small>Number Of Pages</small>
D	Trustee(s)	
D	Guardian/Conservator	
D	Other: _____	<small>Date Of Document</small>
Signer is representing: Name Of Person(s) Or Entity(ies) _____		_____
		<small>Signer(s) Other Than Named Above</small>

EXHIBIT "A"  
TO DEVELOPMENT  
AGREEMENT

Legal Description of Property

Lot 49, in Section 8 Township 2, South, Range 7 West, San Bernardino Base and Meridian, according to Map of Subdivision of Part of Rancho Santa Ana Del Chino, as shown by Map on file in Book 6, Page 15 of Maps, in the Office of the County Recorder of said San Bernardino County.

APN: 1052-481-02-0-000

EXHIBIT "B"  
TO DEVELOPMENT AGREEMENT

Map showing Property and its  
location

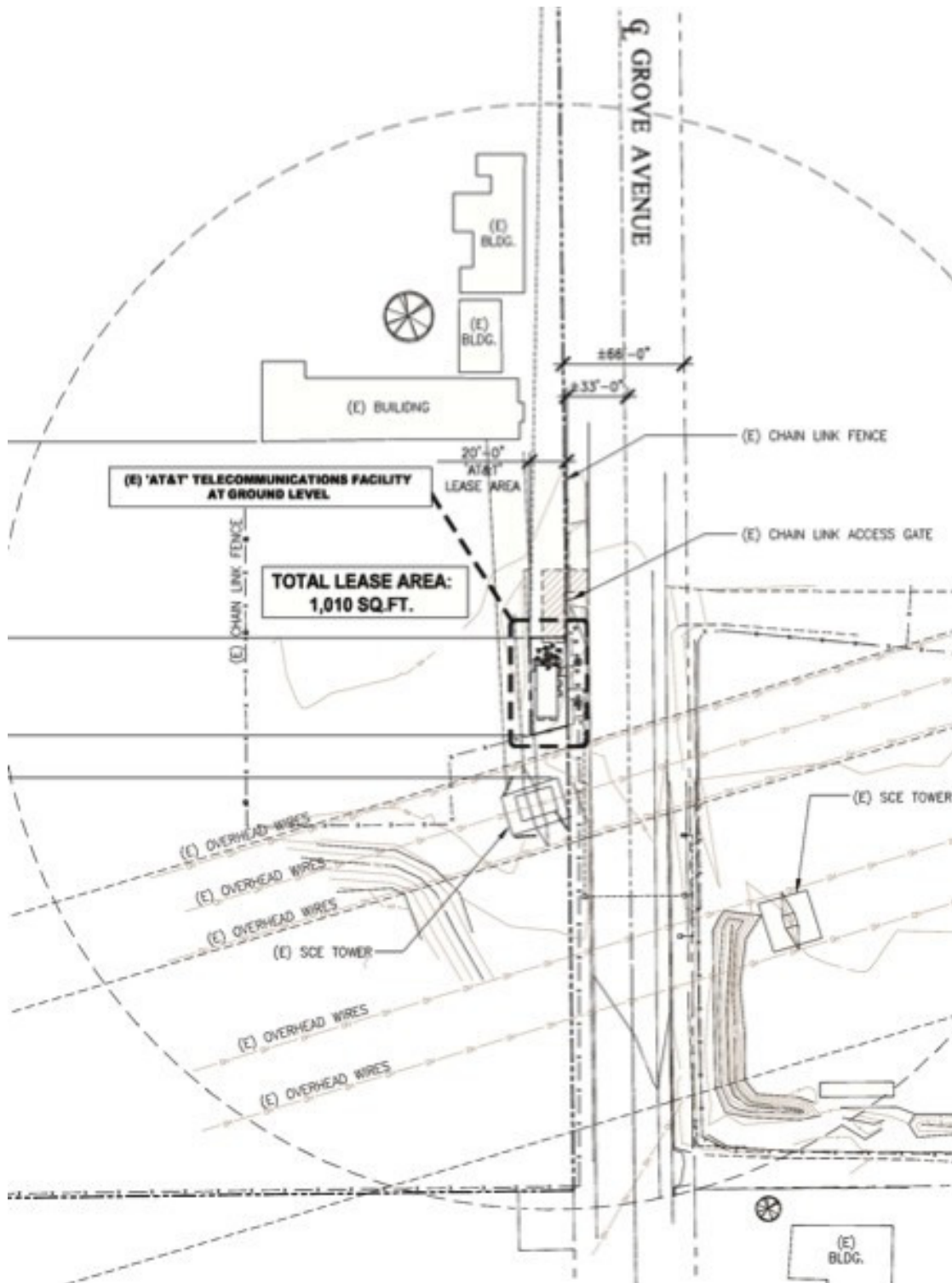






EXHIBIT "C"  
TO DEVELOPMENT  
AGREEMENT

Conceptual Site Plan







# CITY OF ONTARIO

## Agenda Report

September 2, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: A RESOLUTION TO ADOPT THE REVISIONS TO THE CITY OF ONTARIO LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**RECOMMENDATION:** That the City Council adopt a resolution approving the 2014 revisions to the City of Ontario Local Guidelines for Implementing the California Environmental Quality Act (on file in the Records Management Department).

**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:** None.

**BACKGROUND:** The California Environmental Quality Act (CEQA) requires that environmental concerns be considered as a part of all public and private projects. In order to implement the provisions of the act, all public agencies are required to adopt objectives, criteria and specific procedures consistent with CEQA and the State CEQA Guidelines for evaluating the potential environmental issues that may arise in relation to all projects. Local procedures should be revised periodically to conform to any statutory changes in CEQA, revisions made to the State Guidelines, and to address environmental concerns that exist at the local level.

The City of Ontario last updated its local guidelines in July 2013. Since that time, the California Legislature has passed bills requiring changes in local procedures for implementing CEQA. In addition to the new legislation, several court cases resulted in procedural changes that need to be included in the updated City local guidelines. The City Attorney's office has prepared the changes to the City of Ontario's Local Guidelines for Implementing CEQA that are necessary in order to comply with the new laws and procedural requirements. A summary of the recommended amendments is provided as Exhibit "A," memorandum from the City Attorney.

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

Prepared by: Richard Ayala  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 09/02/2014

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

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

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

7

The 2014 update to the City of Ontario Local Guidelines for Implementing CEQA will be distributed to all applicable City departments upon approval by the City Council. The Local Guidelines shall be reviewed periodically for conformance with future State Legislation and changes to the State CEQA Guidelines.

## Memorandum

**TO:** Public Agency Clients (City)  
**FROM:** Best Best & Krieger LLP  
**DATE:** March 26, 2014  
**RE:** 2014 Summary of Changes to Local CEQA Guidelines

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Important changes in the law have been incorporated into the 2014 Update to your Local Guidelines for Implementing the California Environmental Quality Act ("Local Guidelines"). For easy reproduction and access to these Local Guidelines, as well as the California Environmental Quality Act ("CEQA") forms your city will need, and other important legal alerts, please access BBK's CEQA client portal at [www.bbklaw.net/CEQA](http://www.bbklaw.net/CEQA). For technical support please contact Gar House at [Gar.House@bbklaw.com](mailto:Gar.House@bbklaw.com).

Public agencies are required to adopt implementing procedures for administering their responsibilities under CEQA. These procedures include provisions governing how the city will process environmental documents and provide for adequate comment, time periods for review, and lists of permits that are ministerial actions and projects that are considered categorically exempt. City procedures should be updated within 120 days after the State CEQA Guidelines are revised.

This memorandum summarizes the substantive amendments to your Local Guidelines made in response to regulations, legislation and legal cases that changed or impacted certain aspects of CEQA between January 2013 and February 2014. Your Local Guidelines and this memorandum are designed to assist in assessing the environmental implications of a project prior to its approval, as mandated by CEQA. We still recommend, however, that you consult with an attorney when you have specific questions on major, controversial or unusual projects or activities.

### **Revisions to Local CEQA Guidelines.**

#### **1. SECTION 3.08 EMERGENCY PROJECTS**

Pursuant to SB 788, Public Resources Code section 21080, which describes the type of emergency projects, has been amended to add a definition for "highway." This definition has been incorporated into Section 3.08 and added to Section 10.25 of the Local Guidelines.

#### **2. SECTION 3.18 EXEMPTIONS FOR INFILL PROJECTS IN TRANSIT PRIORITY AREAS**

This section was added in response to SB 743, which adds sections 21099 and 21155.4 to the Public Resources Code. The newly added Public Resources Code section 21099 exempts a residential, mixed use residential, or employment center project located within a transit priority area from the requirements of CEQA if certain criteria are met. A definition for "transit priority area" is provided in Section 10.72 of the Local Guidelines.

These projects are exempt if they are consistent with the policies of an applicable specific plan, and also with a general use designation, density, building intensity, and applicable policies specified for the project are in either a sustainable communities strategy or an alternative planning strategy adopted by a metropolitan planning organization.

Further environmental review shall be required only if the events specified in Public Resources Code section 21166 are present.

**3. SECTION 3.19 OTHER SPECIFIC EXEMPTIONS**

This section was amended in response to AB 417, which amends sections 21080.20 and 21080.20.5 of the Public Resources Code. This amendment pertains to an exemption for a bicycle transportation plan for an urban area. For a bicycle transportation plan to be exempt, the lead agency must hold noticed public hearings in areas affected by the bicycle transportation plan to hear and respond to public comment. Publication of the notice must comply with Government Code section 6061 and occur in a newspaper of general circulation in the area affected by the proposed project. The lead agency must also prepare an assessment of any traffic and safety impacts of the project and include measures in the bicycle transportation plan to mitigate potential vehicular traffic, and bicycle and pedestrian safety impacts.

**4. SECTION 7.05 ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECT**

This section has been amended in response to SB 743 and provides for a prevailing rate at per diem wages for the type of work and geographic areas for all construction workers employed in the execution of an Environmental Leadership Project.

Additionally, the certified administrative record for such projects must be made available in an electronic format. Within 10 days of the Governor certifying an Environmental Leadership Development Project, the lead agency shall, at the applicant's expense, issue a public notice. See Public Resources Code section 21187 for the language to be used in the public notice.

**5. SECTION 7.25 PUBLIC HEARING ON DRAFT EIR**

This section of the Local Guidelines was amended to include a public hearing for the adoption of a bicycle transportation plan, as explained in Local Guidelines Section 3.19, and for certain other actions involving the replacement or deletion of mitigation measures under State CEQA Guidelines section 15074.1.

**6. SECTION 10 DEFINITIONS**

**A. Section 10.25 "Highway"**

The definition of "Highway" for the purpose of emergency projects has been added pursuant to SB 788.

**B. Section 10.27. "Infill Site"**

The definition of "Infill Site" has been amended pursuant to SB 743 to include sites

where at least 75 percent of the perimeter of the site “adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.”

C. Section 10.72. “Transit Priority Area”

The definition of a “Transit Priority Area” has been added to the Local Guidelines in response to SB 743 regarding the exemption from CEQA of certain infill projects in transit priority areas. See Section 3.18 of the Local Guidelines.

**Other Changes.**

**Department of Fish and Wildlife.** Effective January 1, 2014, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,181.25. For an Environmental Impact Report, the new filing fee is \$3,029.75. For an environmental document pursuant to a Certified Regulatory Program, the new filing fee is \$1,030.25.

**Conclusion.**

As always, CEQA remains complicated and, at times, challenging to apply. The only constant in this area of law is how quickly the rules change. Should you have questions about any of the provisions discussed above, or about the environmental review of any of your city’s projects, please contact a BB&K attorney for assistance.

**BEST BEST & KRIEGER LLP**

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, AMENDING AND ADOPTING LOCAL GUIDELINES FOR  
IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT  
(PUBLIC RESOURCES CODE §§ 21000 ET SEQ.).

WHEREAS, the California Legislature has amended the California Environmental Quality Act ("CEQA") (Pub. Resources Code §§ 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15000 et seq.); and the California courts have interpreted specific provisions of CEQA and the State CEQA Guidelines; and

WHEREAS, Section 21082 of CEQA requires all public agencies to adopt objectives, criteria and procedures for the evaluation of public and private projects undertaken or approved by such public agencies, and the preparation, if required, of environmental impact reports and negative declarations in connection with that evaluation; and

WHEREAS, the City of Ontario ("City") must revise its local guidelines for implementing CEQA to make them consistent with the current provisions and interpretations of CEQA and the State CEQA Guidelines.

NOW, THEREFORE, the City of Ontario hereby resolves as follows:

SECTION 1. The City adopts "Local Guidelines for Implementing the California Environmental Quality Act (2014 Revision)," a copy of which is on file in the Records Management Department and is available for inspection by the public.

SECTION 2. All prior actions of the City enacting earlier guidelines are hereby repealed.

NOW, THEREFORE, BE IT RESOLVED that the City Council adopts the amended Local Guidelines for Implementing California Environmental Quality Act.

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

PASSED, APPROVED, AND ADOPTED this 2<sup>nd</sup> day of September 2014.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-\_\_\_\_\_ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 2, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-\_\_\_\_\_ duly passed and adopted by the Ontario City Council at their regular meeting held September 2, 2014.

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

(SEAL)



# CITY OF ONTARIO

*Agenda Report*  
September 2, 2014

**SECTION:**  
**PUBLIC HEARINGS**

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 6 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO SEVENTY-TWO HOUR PARKING LIMITATIONS**

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance amending Chapter 6 of Title 4 of the Ontario Municipal Code pertaining to seventy-two hour parking limitations in city-owned parking lots and facilities.

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

**FISCAL IMPACT:** The adoption of this ordinance has no direct fiscal impact.

**BACKGROUND:** Title 4, Chapter 6 of the Ontario Municipal Code (OMC) includes provisions that limit vehicle parking on public streets and alleys to no more than seventy-two consecutive hours consistent with provisions of the California Vehicle Code. The OMC also gives the Police Department the authority to remove vehicles in violation of the seventy-two hour parking limit. The seventy-two hour limit and authority to remove vehicles does not, however, include city-owned parking lots and parking facilities such as the public parking lots in the Town Center, city parks and recreation facilities and other government buildings.

Downtown development including the JH Snyder housing units, De Oro Plaza and the Town Center Plaza are putting higher demands on the available public parking facilities. Some city-owned parking facilities are now being used to store residents' vehicles for extended periods and in some cases, vehicles have been abandoned. Both practices make it difficult to meet the overall parking demand and limit the ability to maintain the parking lots in good order.

California Vehicle Code (C.V.C.) Section 21113 allows municipalities to impose parking restrictions on property under their direct control, and amending the OMC consistent with the C.V.C. will provide greater ability to better regulate and maintain city-owned parking lots.

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

Prepared by: Tom Danna  
Department: Engineering

City Manager  
Approval: 

Submitted to Council/O.H.A. 09/02/2014

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

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

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

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 6 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATED TO SEVENTY-TWO (72) HOUR PARKING LIMITATIONS.

WHEREAS, the general provisions governing traffic within the City of Ontario ("City") are set forth in Chapter 6 of Title 4 of the Ontario Municipal Code; and

WHEREAS, Section 4-6.1011 of Article 10 of Chapter 6 of Title 4 of the Ontario Municipal Code limits parking of any vehicle to no more than seventy-two (72) consecutive hours on any street or alley within the City; and

WHEREAS, Section 4-6.309 of Article 3 of Chapter 6 of Title 4 and Section 4-6.1016 of Article 10 of Chapter 6 of Title 4 of the Ontario Municipal Code give the Police Department the authority to remove from streets abandoned vehicles or vehicles in violation of established parking regulations; and

WHEREAS, in addition to public roadways, there are numerous City-owned, off-street public parking lots and parking facilities where vehicles are either abandoned or parked for more than seventy-two (72) hours; and

WHEREAS, vehicles abandoned or parked in public parking lots and facilities for extended periods of time can disrupt the use of these public facilities, attract crime or vandalism, and create a public nuisance; and

WHEREAS, it is in the City's best interest to maintain these public parking lots and facilities in good order and maximize parking availability for the benefit of all residents and business owners by ensuring that vehicles are not left unattended for extended periods of time; and

WHEREAS, it is prudent and in the interests of public safety and welfare to apply the seventy-two (72) hour parking limitation to all public parking lots and public parking facilities and to provide law enforcement the authority to remove vehicles from these parking lots and facilities if the limitation is exceeded.

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

SECTION 1. Section 4-6.306 of Article 3 of Chapter 6 of Title 4 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Article 3. Enforcement and Obedience to Traffic Regulations

Section 4-6.306. Interference with Police Officers, Other Authorized Persons, and Markings.

(a) No person shall interfere with, or obstruct in any way, any police officer or other officer or employee of the City in the enforcement of the provisions of this chapter.

(b) The removal, obliteration, or concealment of any chalk or other distinguishing mark used by any police officer or other employee or officer of the City in connection with the enforcement of the parking regulations of this chapter shall, if done for the purpose of evading the provisions of this chapter, constitute such interference or obstruction.

(c) A mere change in the position of any automobile or other vehicle within the prescribed area and within the same block during times of limited parking, or a mere change in the stall, space, or position of any automobile or other vehicle within the same City-owned parking lot or parking facility during a period of seventy-two (72) or more consecutive hours, shall not constitute a defense, excuse, or justification for any prosecution pursuant to the provisions of this chapter.

SECTION 2. Section 4-6.309 of Article 3 of Chapter 6 of Title 4 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

#### Article 3. Enforcement and Obedience to Traffic Regulations

##### Section 4-6.309. Removal of Vehicles from Streets, Alleys and City-Owned Parking Lots and Parking Facilities.

Any regularly employed and salaried officer of the Police Department, or any other authorized person undertaking the enforcement of the provisions of this chapter, may remove or cause to be removed the following vehicles:

(a) Any vehicle which has been parked or left standing upon a street, alley, or City-owned parking lot or parking facility for a period of seventy-two (72) or more consecutive hours; or

(b) Any vehicle which is parked or left standing upon a street, alley, or City-owned parking lot or parking facility between the hours of 7:00 a.m. and 7:00 p.m. when such parking or standing is prohibited by law and signs are posted giving notice of such removal; provided, however, that signs giving notice that such vehicle may be removed shall be erected or placed at least twenty-four (24) hours prior to the removal; or

(c) Any vehicle which is parked or left standing upon a street, alley, or City-owned parking lot or parking facility where the use of such street, alley, or City-owned parking lot or parking facility, or any portion thereof, is necessary for the cleaning, repair, or construction of the street, alley, or City-owned parking lot or parking facility or for the installation of underground utilities, or where the use of the street, alley, or City-owned parking lot or parking facility, or any portion thereof, is authorized for a purpose other than the normal flow of traffic, or where the use of the street, alley, or City-owned parking lot or parking facility, or any portion thereof, is necessary for the movement of equipment, articles, or

structures of unusual size and the parking of such vehicle would prohibit or interfere with such use or movement; provided, however, that signs giving notice that such vehicle may be removed shall be erected or placed at least twenty-four (24) hours prior to the removal.

SECTION 3. Section 4-6.1011 of Article 10 of Chapter 6 of Title 4 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Article 10. Stopping, Standing, and Parking for Certain Purposes or in Certain Places

Section 4-6.1011. Seventy-Two (72) Hour Limit.

No person who owns or has possession, custody, or control of any vehicle shall park such vehicle upon any street, alley, or City-owned parking lot or parking facility for a period of seventy-two (72) or more consecutive hours.

SECTION 4. Section 4-6.1016 of Article 10 of Chapter 6 of Title 4 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Article 10. Stopping, Standing, and Parking for Certain Purposes or in Certain Places

Section 4-6.1016. Removal of Vehicles.

In the event of a violation of the provisions of § 4-6.309 of Article 3; §§ 4-6.1003 through 4-6.1005, 4-6.1007, 4-6.1009, 4-6.1011, 4-6.1014 of Article 10; § 4-6.1108 of Article 11; and §§ 4-6.1204 and 4-6.1207 of Article 12 of this chapter, the Police Department is hereby authorized to have the violating vehicles towed away and stored, and the owner, driver, or other person with a right of possession of the vehicle shall pay all lawful charges before the vehicle is returned, in addition to any bail or fine imposed by the courts for the citation of the violation.

SECTION 5. This updated amendment to the ordinance shall become effective thirty (30) days following its adoption.

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

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

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

ATTEST:

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

APPROVED AS TO FORM:

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

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

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

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)