

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
OCTOBER 2, 2012**

Paul S. Leon
Mayor

Sheila Mautz
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member



Chris Hughes
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

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

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

CLOSED SESSION

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 0218-241-15, 9811 E. Edison Avenue; City/Authority Negotiator: Chris Hughes or his designee; Negotiating parties: Lee, Henrietta C. Trust –Est. of; Under negotiation: Price and terms of payment.
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 0218-241-16, 10084 E. Eucalyptus Avenue; City/Authority Negotiator: Chris Hughes or his designee; Negotiating parties: Lee, Helen J. Tr. and Lee, Henrietta C. Trust – Est. of; Under negotiation: Price and terms of payment.
- GC 54956.9 (b), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
One (1) or more cases: City of Los Angeles/Los Angeles World Airports (LAWA).

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

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Reverend Nelson Grande, Westminster Presbyterian Church

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

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

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

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

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of September 4, 2012, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills August 12, 2012 through September 8, 2012 and **Payroll** August 12, 2012 through September 8, 2012, when audited by the Finance Committee.

3. REJECTION OF BIDS RECEIVED FOR THE CONSTRUCTION OF THE PROPOSED TOWN SQUARE PROJECT

That the City Council reject in accordance with Ontario Municipal Code Title 2, Chapter 6, Section 2-6.13(g) all bids received to date in connection with the construction of the proposed Ontario Town Square Project located at 224 North Euclid Avenue; and direct staff to reevaluate, re-scope, and rebid the project.

4. A RESOLUTION APPROVING A TIME EXTENSION FOR TENTATIVE TRACT MAP 18476 (FILE NO. PMTT07-002)

That the City Council adopt a resolution approving a five-year time extension for Tentative Tract Map 18476 (File No. PMTT07-002), a request to subdivide 37.77 acres of land into 143 residential lots and 3 lettered lots within Planning Area 9 of the West Haven Specific Plan, located along the east side of Turner Avenue, 255 feet north of Schaefer Avenue.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIVE-YEAR TIME EXTENSION FOR FILE NO. PMTT07-002 (TT 18476), A REQUEST TO SUBDIVIDE 37.77 ACRES OF LAND INTO 143 RESIDENTIAL LOTS AND 3 LETTERED LOTS WITHIN PLANNING AREA 9 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ALONG THE EAST SIDE OF TURNER AVENUE, NORTH OF SCHAEFER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 0218-151-19 AND 23.

5. A RESOLUTION APPROVING A TIME EXTENSION FOR TENTATIVE TRACT MAP 18477 (FILE NO. PMTT07-003)

That the City Council adopt a resolution approving a five-year time extension for Tentative Tract Map 18477 (File No. PMTT07-003), a request to subdivide 37.77 acres of land into 2 numbered lots and 5 lettered lots within Planning Area 9 of the West Haven Specific Plan, located along the east side of Turner Avenue, 255 feet north of Schaefer Avenue.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIVE-YEAR TIME EXTENSION FOR FILE NO. PMTT07-003 (TT 18477), A TIME EXTENSION REQUEST FOR THE SUBDIVISION OF 37.77 ACRES INTO THREE NUMBERED LOTS AND FIVE LETTERED LOTS, WITHIN PLANNING AREA 9 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ALONG THE EAST SIDE OF TURNER AVENUE, NORTH OF SCHAEFER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 0218-151-19 AND 23.

6. A PROFESSIONAL SERVICES AGREEMENT FOR FORENSIC MEDICAL EVIDENCE COLLECTION AND NURSES SERVICES/LAW ENFORCEMENT MEDICAL SERVICES, INC.

That the City Council authorize the City Manager to execute a professional services agreement (on file in the Records Management Department) with Law Enforcement Medical Services, Inc., (LEMS) of Fontana, California, for three years, with two (2) one year options to extend of forensic medical evidence collection and nurse services in an estimated amount of \$70,000 annually.

PUBLIC HEARINGS

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

7. CONSIDERATION OF A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN A PORTION OF CERTAIN REAL PROPERTY

That the City Council conduct a public hearing to:

- (A) Consider the adoption of a Resolution of Necessity and provide all parties interested in the affected property, their attorneys or representatives, an opportunity to be heard on the issues relevant to the Resolution of Necessity;
- (B) Make the following findings as hereinafter described in this report:
 - (1) The public interest and necessity require the proposed project;
 - (2) The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
 - (3) The real property to be acquired is necessary for the project; and
 - (4) The offer of just compensation has been made to the property owner; and
- (C) Adopt a Resolution of Necessity declaring that the acquisition of fee and temporary construction easement interests in a portion of certain real property, more particularly described as APN 1008-431-04, by eminent domain is necessary for public right-of-way and the construction of the North Mountain Avenue Corridor Widening Project and related public infrastructure improvements in the City of Ontario, San Bernardino County, California.

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION OF FEE AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN A PORTION OF CERTAIN REAL PROPERTY LOCATED AT THE NORTHWEST CORNER OF MOUNTAIN AVENUE AND FIFTH STREET, IN ONTARIO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS PORTIONS OF ASSESSOR PARCEL NO. 1008-431-04, BY EMINENT DOMAIN, IS NECESSARY FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE NORTH MOUNTAIN AVENUE CORRIDOR WIDENING PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

COUNCIL MATTERS

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

STAFF MATTERS

City Manager Hughes

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council / / Housing Authority // Other // (GC 54957.1)
October 2, 2012

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

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 0218-241-15, 9811 E. Edison Avenue; City/Authority Negotiator: Chris Hughes or his designee; Negotiating parties: Lee, Henrietta C. Trust –Est. of; Under negotiation: Price and terms of payment.

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 0218-241-16, 10084 E. Eucalyptus Avenue; City/Authority Negotiator: Chris Hughes or his designee; Negotiating parties: Lee, Helen J. Tr. and Lee, Henrietta C. Trust – Est. of; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
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Disposition: _____

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council / / Housing Authority / / Other / / (GC 54957.1)
October 2, 2012

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

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

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

- GC 54956.9(b), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
One (1) or more cases: City of Los Angeles/Los Angeles World Airports (LAWA).

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

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

CITY OF ONTARIO

Agenda Report
October 2, 2012

SECTION:
CONSENT CALENDAR

SUBJECT: REJECTION OF BIDS RECEIVED FOR THE CONSTRUCTION OF THE PROPOSED TOWN SQUARE PROJECT

RECOMMENDATION: That the City Council reject in accordance with Ontario Municipal Code Title 2, Chapter 6, Section 2-6.13(g) all bids received to date in connection with the construction of the proposed Ontario Town Square Project located at 224 North Euclid Avenue; and direct staff to reevaluate, re-scope, and rebid the project.

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

FISCAL IMPACT: None.

BACKGROUND: In August 2012, staff prequalified five firms to bid on the project in accordance with provisions of Resolution 2003-011 and California Public Contract Code Section 2010. The five contractors, each holding the prerequisite Class A Contractor's license, were invited to submit bids for the construction of the Town Square Project based upon the project design specifications.

CS Legacy Construction, Inc.	Chino, CA
KPRS Construction Services, Inc.	Brea, CA
Los Angeles Engineering, Inc.	Covina, CA
T. B. Penick & Sons, Inc.	San Diego, CA
W.D. Gott Construction Co.	Upland, CA

Bidding on the project closed on September 5, 2012. Unfortunately, all of the bids received exceeded the professional estimate by at least 14%, or approximately \$650,000. Therefore, it is recommended that the City Council reject all bids pursuant to the authorization set forth in the "Instruction to Bidders" and Section 2-6.13(g) of the Ontario Municipal Code, and direct staff to reevaluate the project's scope

STAFF MEMBER PRESENTING: Otto Kroutil, Development Director

Prepared by: David Simpson
Department: Development Agency

City Manager
Approval: 

Submitted to Council/O.H.A. 10/02/2012

Approved: _____

Continued to: _____

Denied: _____

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before rebidding the project. Staff will request the prequalified contractors to rebid the project at a future date based upon the changed project scope and specifications.

The five bidders were notified via certified mail of staff's recommendation as well as the time and place of this City Council meeting.

CITY OF ONTARIO

Agenda Report
October 2, 2012

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING A TIME EXTENSION FOR TENTATIVE TRACT MAP 18476 (FILE NO. PMTT07-002)

RECOMMENDATION: That the City Council adopt a resolution approving a five-year time extension for Tentative Tract Map 18476 (File No. PMTT07-002), a request to subdivide 37.77 acres of land into 143 residential lots and 3 lettered lots within Planning Area 9 of the West Haven Specific Plan, located along the east side of Turner Avenue, 255 feet north of Schaefer Avenue.

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

FISCAL IMPACT: Granting of the time extension provides for greater development opportunities as the housing market rebounds.

BACKGROUND: Tentative Tract Map 18476 was approved by the City Planning Commission on July 24, 2007. The subdivision provided for the creation of 143 numbered lots and 3 lettered lots ranging in size from 5,250 square feet to 14,118 square feet with an average lot size of 6,155 square feet. The lots are configured around two pocket parks within the subdivision.

In conjunction with the tentative map approval, the original applicant, Armada Development, entered into a Development Agreement with the City Council on July 16, 2007. The agreement included, but was not limited to, provisions for development impact fees, affordable housing, public services funding, school financing, and tentative map approval time period. Under the Development Agreement, the tentative map was approved initially for a five-year period with the option of a five-year extension, to be approved by the City Council. CV Communities, the current applicant, is now requesting to exercise the five-year extension.

STAFF MEMBER PRESENTING: Jerry L. Blum, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager
Approval: _____



Submitted to Council/O.H.A. 10/02/2012
Approved: _____
Continued to: _____
Denied: _____

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ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the West Haven Specific Plan, for which an Environmental Impact Report (SCH #2004071095) was certified by the City Council on July 16, 2007. This Application is unchanged and introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIVE-YEAR TIME EXTENSION FOR FILE NO. PMTT07-002 (TT 18476), A REQUEST TO SUBDIVIDE 37.77 ACRES OF LAND INTO 143 RESIDENTIAL LOTS AND 3 LETTERED LOTS WITHIN PLANNING AREA 9 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ALONG THE EAST SIDE OF TURNER AVENUE, NORTH OF SCHAEFER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 0218-151-19 AND 23.

WHEREAS, CV Communities ("Applicant") has filed an Application for the approval of a time extension for a tentative map, File No. PMTT07-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to property located within Subarea 9 of the West Haven Specific Plan located on the east side of Turner Avenue, north of Schaefer Avenue and is presently vacant; and

WHEREAS, the property to the north of the Project site is within the R1 (Single Family Residential) zoning district and is developed with single family residences. The property to the south is within Subarea 10, Low Density Residential land use designation of The Avenue Specific Plan and is vacant. The property to the east is within the Open Space designation of the West Haven Specific Plan and is developed with electric transmission facilities. The property to the west is within the R1, Single Family Residential, zoning district and is developed with single family residences; and

WHEREAS, On July 24, 2007, the Planning Commission approved the application for the subdivision of the property into 143 lots; and

WHEREAS, On July 16, 2007, the City Council approved a development agreement for the property that provided an initial approval period of five (5) years for the tentative map and a possible extension of an additional five (5) years, subject to approval by the City Council; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the West Haven Specific Plan, for which an Environmental Impact Report (SCH #2004071095) was certified by the City Council on July 16, 2007, and this Application introduces no new significant environmental impacts; and

WHEREAS, the City's "Local 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; and

WHEREAS, on August 28, 2012, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, concluded said hearing on that date, and unanimously recommended approval of the application to the City Council; and

WHEREAS, on October 2, 2012, 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 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. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously certified West Haven Specific Plan EIR and supporting documentation. Based upon the facts and information contained in the West Haven Specific Plan EIR (SCH #2004071095) and supporting documentation, the City Council finds as follows:

- a. The previous West Haven Specific Plan EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and
- b. The previous West Haven Specific Plan EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and
- c. The previous West Haven Specific Plan EIR reflects the independent judgment of the City Council; and
- d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference.

SECTION 2. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:

- a. The subdivision is consistent with all applicable general and specific plans. The subdivision of 37.77 acres into 143 parcels ranging in size from 5,250 square feet to 14,118 is consistent the Low Density Residential land use designation of TOP and the requirements of Subarea 9 of the West Haven Specific Plan.
- b. The design or improvement of the subdivision is consistent with all applicable general and specific plans. The subdivision complies with the development standards of the West Haven Specific Plan.

c. The site is physically suitable for the type of development proposed. The site is rectangular in shape and relatively flat in slope, thus providing sufficient area, adequate access, and appropriate amenities for the type of development proposed and to serve future residents.

d. The site is physically suitable for the proposed density of development. The site is rectangular in shape and relatively flat in slope, thus providing sufficient area, adequate access, and appropriate amenities for the type of development proposed and to serve future residents.

e. The design of the subdivision or the proposed improvement is not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat. An Environmental Impact Report was prepared for the West Haven Specific Plan. The EIR identified potential impacts resulting from the development and, to the extent practicable, mitigated impacts associated with the development.

f. The design of the subdivision or the proposed improvement is not likely to cause serious public health problems. The potential environmental impacts of the Project were evaluated with the West Haven Specific Plan EIR that was certified by the City Council on July 16, 2007.

g. The design of the subdivision will not conflict with any easement acquired by the public at large, then of record, for access through or use of the property within the proposed subdivision. There are no easements acquired by the public through the site.

h. The design of the subdivision has, to the extent feasible, provided for future passive or natural heating or cooling opportunities, i.e. lot sizes and configuration permit orientation of structures in an east-west alignment or permit orientation of structures to take advantage of shade or prevailing breezes. The majority of the lots will provide for east-west orientation of units within the subdivision, thus allowing opportunities for passive solar and to take advantage of the prevailing evening breeze from the southwest.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby approves a five (5) year time extension for the Project.

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

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

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

PASSED, APPROVED, AND ADOPTED this 2nd day of October 2012.

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. 2012- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 2, 2012 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. 2012- duly passed and adopted by the Ontario City Council at their regular meeting held October 2, 2012.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
October 2, 2012

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING A TIME EXTENSION FOR TENTATIVE TRACT MAP 18477 (FILE NO. PMTT07-003)

RECOMMENDATION: That the City Council adopt a resolution approving a five-year time extension for Tentative Tract Map 18477 (File No. PMTT07-003), a request to subdivide 37.77 acres of land into 2 numbered lots and 5 lettered lots within Planning Area 9 of the West Haven Specific Plan, located along the east side of Turner Avenue, 255 feet north of Schaefer Avenue.


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

FISCAL IMPACT: Granting of the time extension provides for greater development opportunities as the housing market rebounds.

BACKGROUND: Tentative Tract Map 18477 was approved by the City Planning Commission on July 24, 2007. The "A" map subdivision provided for the creation of 3 numbered lots and 5 lettered lots and the internal street system for the subdivision. The term "A" map refers to the process by which the developer proposes to subdivide the property into large parcels, often for financing purposes and/or bonding for infrastructure improvements. The "A" map is later subdivided into the individual lots for development (referred to as the "B" map). File No. PMTT07-002 (TT 18476) is the "B" map for this parcel.

In conjunction with the tentative map approval, the original applicant, Armada Development, entered into a Development Agreement with the City Council on July 16, 2007. The agreement included, but was not limited to, provisions for development impact fees, affordable housing, public services funding, school financing, and tentative map approval time period. Under the Development Agreement, the

STAFF MEMBER PRESENTING: Jerry L. Blum, Planning Director

Prepared by: Scott Murphy
Department: Planning
City Manager Approval: 

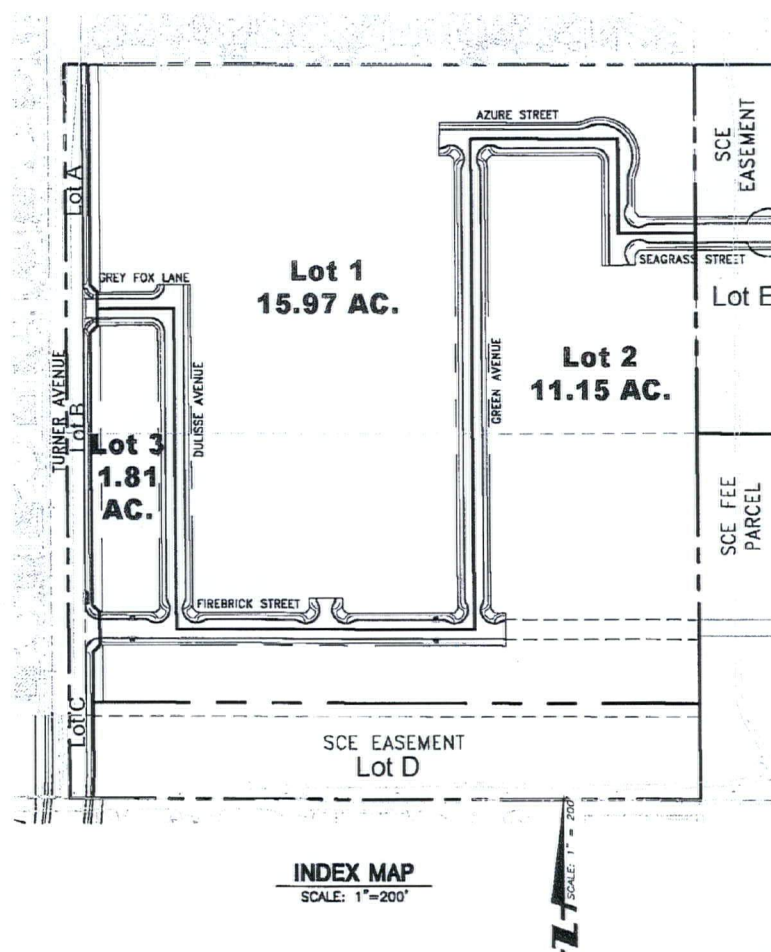
Submitted to Council/O.H.A. 10/02/2012
Approved: _____
Continued to: _____
Denied: _____

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tentative map was approved initially for a five-year period with the option of a five-year extension, to be approved by the City Council. CV Communities, the current applicant, is now requesting to exercise the five-year extension.

In reviewing the time extension request, staff finds that the West Haven Specific Plan development standards remain unchanged from the initial project approval. While a new land use plan (TOP) has been adopted for the City since project approval, the land use designation for the site remains the same (Low Density Residential). The creation of the 3 numbered lots is consistent with Subarea 9 (5,250 and 6,300 square foot minimum lot sizes) of the West Haven Specific Plan. Further, the conditions of approval require installation of all infrastructure improvements (sewer, water, etc.) necessary to serve the site. The applicant is a member of NMC Builders and is involved in the design of the backbone infrastructure necessary to serve the site. The work being done by NMC Builders would provide the infrastructure to serve the site, consistent with the conditions of approval.

TENTATIVE TRACT MAP 18477



The Planning Commission reviewed the application at their meeting of August 28, 2012 and found that the tentative map is in compliance with current development standards and conditions of approval. As a result, the Planning Commission unanimously recommended approval of the time extension.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the West Haven Specific Plan, for which an Environmental Impact Report (SCH #2004071095) was certified by the City Council on July 16, 2007. This Application is unchanged and introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIVE-YEAR TIME EXTENSION FOR FILE NO. PMTT07-003 (TT 18477), A TIME EXTENSION REQUEST FOR THE SUBDIVISION OF 37.77 ACRES INTO THREE NUMBERED LOTS AND FIVE LETTERED LOTS, WITHIN PLANNING AREA 9 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ALONG THE EAST SIDE OF TURNER AVENUE, NORTH OF SCHAEFER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 0218-151-19 AND 23.

WHEREAS, CV Communities ("Applicant") has filed an Application for the approval of a time extension for a tentative map, File No. PMTT07-003, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to property located within Subarea 9 of the West Haven Specific Plan located on the east side of Turner Avenue, north of Schaefer Avenue and is presently vacant; and

WHEREAS, the property to the north of the Project site is within the R1 (Single Family Residential) zoning district and is developed with single family residences. The property to the south is within Subarea 10, Low Density Residential land use designation of The Avenue Specific Plan and is vacant. The property to the east is within the Open Space designation of the West Haven Specific Plan and is developed with electric transmission facilities. The property to the west is within the R1, Single Family Residential, zoning district and is developed with single family residences; and

WHEREAS, On July 24, 2007, the Planning Commission approved the application for the subdivision of the property into three numbered and five lettered lots; and

WHEREAS, On July 16, 2007, the City Council approved a development agreement for the property that provided an initial approval period of five (5) years for the tentative map and a possible extension of an additional five (5) years, subject to approval by the City Council; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the West Haven Specific Plan, for which an Environmental Impact Report (SCH #2004071095) was certified by the City Council on July 16, 2007, and this Application introduces no new significant environmental impacts; and

WHEREAS, the City's "Local 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; and

WHEREAS, on August 28, 2012, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, concluded said hearing on that date, and unanimously recommended approval of the application; and

WHEREAS, on October 2, 2012, the Planning Commission of the City of Ontario conducted a hearing to consider the project and concluded said hearing on that date; and

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

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

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously certified West Haven Specific Plan EIR and supporting documentation. Based upon the facts and information contained in the West Haven Specific Plan EIR (SCH #2004071095) and supporting documentation, the City Council finds as follows:

- a. The previous West Haven Specific Plan EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and
- b. The previous West Haven Specific Plan EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and.
- c. The previous West Haven Specific Plan EIR reflects the independent judgment of the Planning Commission; and
- d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference.

SECTION 2. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:

- a. The subdivision is consistent with all applicable general and specific plans. The subdivision of 37.77 acres into three lettered and five numbered parcels is consistent the Low Density Residential land use designation of TOP and the requirements of Subarea 9 of the West Haven Specific Plan.

b. The design or improvement of the subdivision is consistent with all applicable general and specific plans. The subdivision complies with the development standards of the West Haven Specific Plan.

c. The site is physically suitable for the type of development proposed. The site is rectangular in shape and relatively flat in slope, thus providing sufficient area, adequate access, and appropriate amenities for the type of development proposed and to serve future residents.

d. The site is physically suitable for the proposed density of development. The site is rectangular in shape and relatively flat in slope, thus providing sufficient area, adequate access, and appropriate amenities for the type of development proposed and to serve future residents.

e. The design of the subdivision or the proposed improvement is not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat. An Environmental Impact Report was prepared for the West Haven Specific Plan. The EIR identified potential impacts resulting from the development and, to the extent practicable, mitigated impacts associated with the development.

f. The design of the subdivision or the proposed improvement is not likely to cause serious public health problems. The potential environmental impacts of the Project were evaluated with the West Haven Specific Plan EIR that was certified by the City Council on July 16, 2007.

g. The design of the subdivision will not conflict with any easement acquired by the public at large, then of record, for access through or use of the property within the proposed subdivision. There are no known easements acquired by the public through the site.

h. The design of the subdivision has, to the extent feasible, provided for future passive or natural heating or cooling opportunities, i.e. lot sizes and configuration permit orientation of structures in an east-west alignment or permit orientation of structures to take advantage of shade or prevailing breezes.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby approves a five (5) year time extension for the Project.

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

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

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

PASSED, APPROVED, AND ADOPTED this 2nd day of October 2012.

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. 2012- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 2, 2012 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. 2012- duly passed and adopted by the Ontario City Council at their regular meeting held October 2, 2012.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
October 2, 2012

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR FORENSIC MEDICAL EVIDENCE COLLECTION AND NURSES SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute a professional services agreement (on file in the Records Management Department) with Law Enforcement Medical Services, Inc., (LEMS) of Fontana, California, for three years, with two (2) one year options to extend of forensic medical evidence collection and nurse services in an estimated amount of \$70,000 annually.

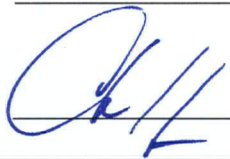
COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Maintain the Current High Level of Public Safety
Operate in a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

FISCAL IMPACT: The annual cost is estimated at \$70,000; however, the actual cost to be incurred will be determined by the type, nature, and frequency of use for forensic medical evidence collection and nurse services. Services will be billed based on the established current Fee Schedule, which LEMS has agreed to extend existing rates. Appropriations for this agreement are included in the Fiscal Year 2012-13 Budget.

BACKGROUND: Under State law, the collection of forensic medical evidence and medical samples is required to be performed by State licensed and certified examiners in the cases of sex crime investigations, driving under the influence, and in the registration of sex offenders. The staff of LEMS consists of fully trained and State certified nurses, phlebotomists, sexual assault nurse examiners, and licensed vocational nurses. LEMS has agreed to maintain its current billing rates as set forth in last year's Services and Fee Schedules.

The terms of the agreement identify for LEMS to provide all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply forensic medical evidence collection services to the Ontario Police Department. For the past 12 years, LEMS has provided these services for the Ontario Police Department in a consistently reliable, satisfactory manner and has been

STAFF MEMBER PRESENTING: Eric Hopley, Chief of Police

Prepared by: Donna Bailey
Department: Police
City Manager Approval: 

Submitted to Council/O.H.A. 10/02/2012
Approved: _____
Continued to: _____
Denied: _____

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the primary forensic medical evidence collection services to the Department. LEMS also performs these forensic medical collection services for the San Bernardino County Sheriff's Department, California Highway Patrol, and police departments from the cities of Colton, Fontana, Montclair, and Redlands.

CITY OF ONTARIO

Agenda Report
October 2, 2012

SECTION:
PUBLIC HEARINGS

SUBJECT: CONSIDERATION OF A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN A PORTION OF CERTAIN REAL PROPERTY

RECOMMENDATION: That the City Council conduct a public hearing to:

- (A) Consider the adoption of a Resolution of Necessity and provide all parties interested in the affected property, their attorneys or representatives, an opportunity to be heard on the issues relevant to the Resolution of Necessity;
- (B) Make the following findings as hereinafter described in this report:
 - (1) The public interest and necessity require the proposed project;
 - (2) The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
 - (3) The real property to be acquired is necessary for the project; and
 - (4) The offer of just compensation has been made to the property owner; and
- (C) Adopt a Resolution of Necessity declaring that the acquisition of fee and temporary construction easement interests in a portion of certain real property, more particularly described as APN 1008-431-04, by eminent domain is necessary for public right-of-way and the construction of the North Mountain Avenue Corridor Widening Project and related public infrastructure improvements in the City of Ontario, San Bernardino County, California.

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

FISCAL IMPACT: The City's offer for just compensation is in the amount of Sixty-Five Thousand Two Hundred Dollars (\$65,200) for the subject property. Funding for the offer is included in the FY 2012-13 Annual Operating Budget.

STAFF MEMBER PRESENTING: John Andrews, Economic Development Director

Prepared by: John Andrews
Department: Economic Development

City Manager
Approval: 

Submitted to Council/O.H.A. 10/02/2012
Approved: _____
Continued to: _____
Denied: _____

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BACKGROUND: The North Mountain Avenue Corridor Widening Project and related public infrastructure improvements are required for and will benefit the community by providing the necessary traffic improvements to mitigate the impacts of future anticipated traffic volumes on this commercial corridor.

Staff has been negotiating on behalf of the City to purchase the property, but no agreement has been reached with the owner. A preliminary title report was ordered to determine and confirm the identities of the record owner. Following standard public records and due diligence searches for ownership information, notices of this public hearing were mailed to the property owner, Palm Springs Oil Co.

Since an agreement has not been reached with the property owner, it may become necessary to acquire the property by the eminent domain process. The eminent domain process begins with the adoption of a Resolution of Necessity declaring the intent to acquire fee and temporary construction easement interest in a portion of certain real property through eminent domain proceedings for public right-of-way and the construction of the North Mountain Avenue Corridor Widening Project and related public infrastructure improvements. Adoption of the Resolution of Necessity should not affect any negotiations or agreements reached with the property owner.

DESCRIPTION OF PROPERTY TO BE ACQUIRED:

The affected property is located at the northwest corner of Mountain Avenue and Fifth Street, in the City of Ontario, and is further described in Exhibit "A" to the resolution.

HEARINGS AND REQUIRED FINDINGS:

The recommended actions of the City Council pertain to the acquisition of fee and temporary construction easement interests in a portion of certain real property, which bears Assessor Parcel No. 1008-431-04, from the property owner, Palm Springs Oil Company, a California corporation.

California eminent domain law provides that a public entity may not commence an eminent domain proceeding until its governing body has adopted a Resolution of Necessity, which resolution may only be adopted after the governing body has given each party with an interest in the affected property or their representatives a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project.
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The real property to be acquired is necessary for the project.
4. The offer of just compensation has been made to the property owner.

A notice of hearing was mailed on September 12, 2012 by first class mail to the property owner in accordance with Section 1245.235 of the California Code of Civil Procedure.

The above four required findings are addressed as follows:

1. The Public Interest and Necessity Require the Proposed Project

The North Mountain Avenue Corridor Widening Project in San Bernardino County, California will benefit the community by providing the necessary traffic improvements to mitigate the impacts of future anticipated traffic volumes on this commercial corridor.

2. The Project is Planned or Located in a Manner that will be Most Compatible with the Greatest Public Good and the Least Private Injury

The proposed improvement project is the only feasible alternative available to address the necessary traffic mitigation. This was the lowest cost alternative with the shortest construction time, thus significantly reducing the short term impacts and detours to commercial businesses in the area.

3. The Real Property to be Acquired is Necessary for the Proposed Project

The property described in Exhibit "A" of the resolution (portions of APN 1008-431-04) is necessary for the project. The right of way is necessary to complete the improvement project and associated mitigation measures.

4. The Offer of Just Compensation Has Been Made

An appraisal was prepared by John P. Laurain of R. P. Laurain & Associates to establish the fair market value of the real property the City is seeking to acquire. The offer of just compensation was made to the property owner to acquire fee and temporary construction easement interests as established by the approved appraisal and as required by Section 7267.2 of the California Government Code. Although a negotiated settlement may still be possible for the real property cited above, it would be appropriate to commence the procedures to acquire the property through eminent domain, to ensure that the City has possession of the real property, which is necessary in order for the City to begin construction of the project.

ENVIRONMENTAL ANALYSIS: The proposed acquisition and the widening of Mountain Avenue was a component of the project that was analyzed in the Ontario Wal-Mart Supercenter Subsequent Environmental Impact Report (the "SEIR"), certified in October 2007. Certain aspects of that project (the "Wal-Mart Supercenter project") were later modified relating to the internal access and circulation of truck traffic, the environmental impacts of which were addressed via the Addendum to the SEIR, approved in June 2011. However, no revisions or modifications were made to the Wal-Mart Supercenter project with regard to the proposed widening of Mountain Avenue, and the SEIR, as modified by the Addendum, continues to constitute an accurate and complete assessment of the environmental impacts of widening Mountain Avenue. Staff has analyzed the current proposed acquisition and widening of Mountain Avenue and determined that there is no deviation from the description of this component of the overall Wal-Mart Supercenter project contained in the SEIR and the Addendum. Consequently, none of the criteria for requiring subsequent environmental review under CEQA pursuant to Public Resources Code section 21166 and State CEQA Guidelines section 15162 apply to the present action as the Wal-Mart Supercenter project has not been modified in any sense and there has been no change in circumstances under which the project is being undertaken nor any new information of substantial importance that would result in a new or substantially greater significant impacts as compared to those identified in the SEIR and the Addendum. Thus, no further CEQA analysis is required.

RESOLUTION NO. _____

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION OF FEE AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN A PORTION OF CERTAIN REAL PROPERTY LOCATED AT THE NORTHWEST CORNER OF MOUNTAIN AVENUE AND FIFTH STREET, IN ONTARIO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS PORTIONS OF ASSESSOR PARCEL NO. 1008-431-04, BY EMINENT DOMAIN, IS NECESSARY FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE NORTH MOUNTAIN AVENUE CORRIDOR WIDENING PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

WHEREAS, the City of Ontario (the "City") proposes to acquire fee and temporary construction easement interests in a portion of certain real property located at the northwest corner of Mountain Avenue and Fifth Street, in the City of Ontario, California, more particularly described as portions of Assessor Parcel No. 1008-431-04, for public right-of-way purposes and the construction of the North Mountain Avenue Corridor Widening Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it be by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, October 2, 2012, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. CEQA. The City finds that the proposed acquisition and widening of Mountain Avenue were previously identified in the Ontario Wal-Mart Supercenter Subsequent Environmental Impact Report (SEIR), certified October 2007, and the Addendum to the SEIR, adopted June 2011. Pursuant to Public Resources Code Section 21166 and State CEQA Guidelines Section 15162, the City further finds that:

- a) no deviations from the Wal-Mart Supercenter SEIR's and Addendum's descriptions of the proposed acquisition and widening have been proposed;
- b) no changes in the circumstances under which the Wal-Mart Supercenter project will be undertaken have occurred that would result in new or substantially greater significant impacts as compared to those identified in the SEIR and Addendum; and
- c) no information of substantial importance that could not have been known at the time of the Wal-Mart Supercenter project's approval has been revealed that would result in new or substantially greater significant impacts as compared to those identified in the SEIR and Addendum.

Consequently, the City finds that no subsequent environmental review is required and that the SEIR and Addendum are sufficient to satisfy California Environmental Quality Act requirements for the proposed acquisition and associated road widening.

SECTION 9. Effective Date. This Resolution shall take effect upon adoption. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 2nd day of October 2012.

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. 2012- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 2, 2012 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. 2012- duly passed and adopted by the Ontario City Council at their regular meeting held October 2, 2012.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Legal Definitions of Property to be Acquired

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

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

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

The TCE shall commence after the owner is provided forty-eight (48) hours advanced written notice by the City of the City's intent to utilize the TCE area. Such written notice shall only be provided after the City has issued a Notice to Proceed letter. The use of the TCE area shall not exceed one hundred twenty (120) days, provided, however, that the term of the TCE may be extended upon payment by the City to the Property Owner of an amount equal to Two Hundred Dollars (\$200) per month, prorated to the actual date upon which the City's use of the Property terminates. In no event will the City's rights under the TCE extend beyond June 30, 2014 without written agreement by the Property Owner.

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

EXHIBIT "A"

FEE

All that certain property as shown on R/S 23/15 situated in the City of Ontario, County of San Bernardino, State of California, described as follows:

The easterly 10.00 feet, measured at right angle, of the south 150.00 feet of Lot 748, per map recorded in Book 11, Page 6 of Maps, in the Office of the County Recorder of said County.

In addition, that certain triangular area, bounded on the south by the north line of Fifth Street (66 feet wide); bounded on the east by the west line of said 10.00 feet wide parcel described above; and lying southeasterly of the following described line:

Commencing at a point in the north line of said Fifth Street and 35.00 feet west of the southeast corner of said Lot 748; and terminating at a point in the west line of said 10.00 feet wide parcel described above and 22.00 feet north of the north line of Fifth Street, as measured along said west line of said 10.00 feet wide parcel.

Excepting therefrom that area dedicated to the City of Ontario per Document No. 83-104833 O.R.

Said parcel is shown on Exhibit "B" attached hereto and made a part hereof.

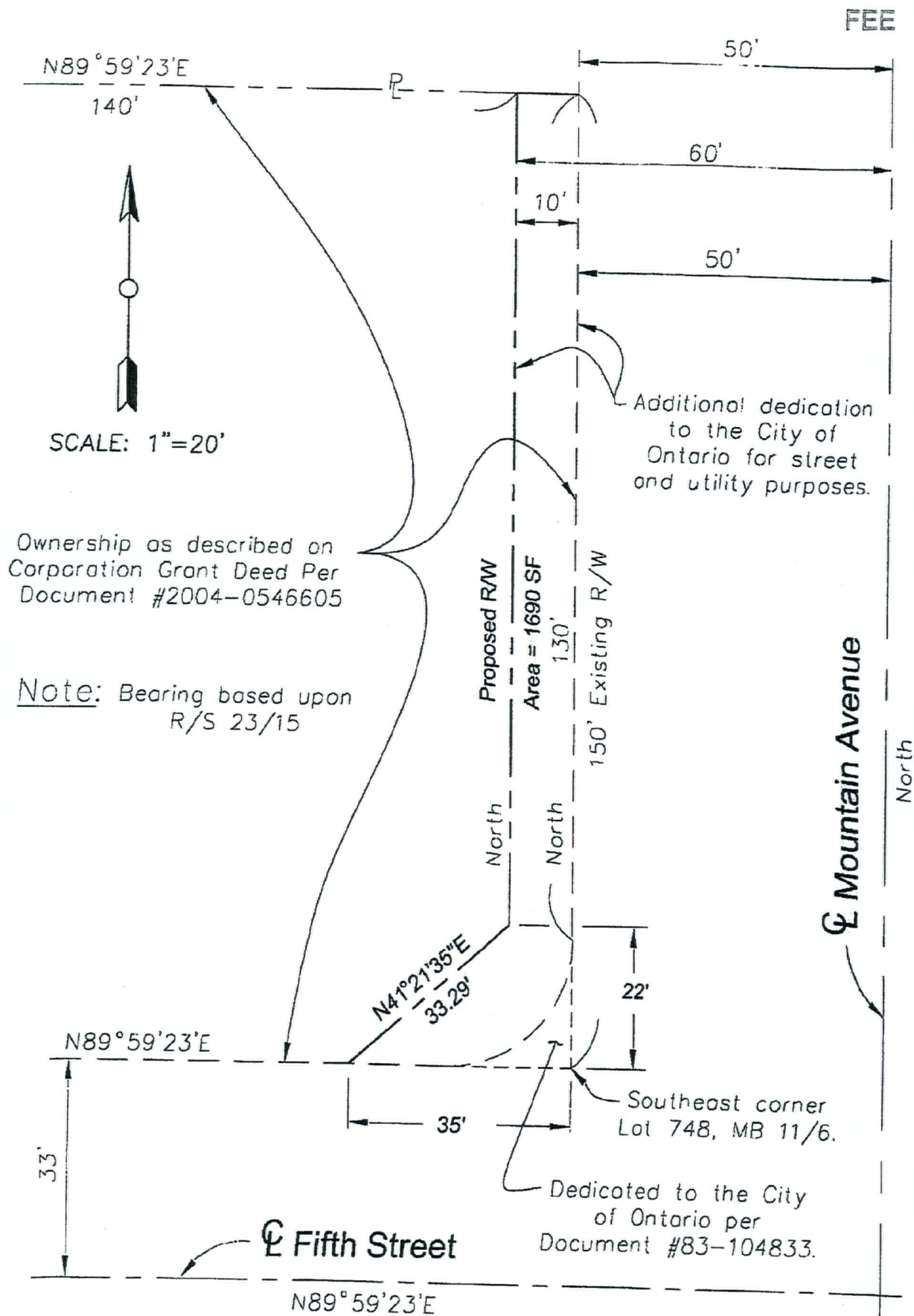


EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT
ADJOINING MOUNTAIN AVENUE

TEMPORARY
CONSTRUCTION
EASEMENT

LEGAL DESCRIPTION

THAT PORTION OF LOT 748, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON THE MAP OF ONTARIO, FILED IN BOOK 11, PAGE 6, OF MAPS, RECORDS OF SAID COUNTY, BEING ALSO A PORTION OF THAT CERTAIN PARCEL OF LAND SHOWN AS "NOT A PART" ON A MAP FILED IN BOOK 22, PAGE 29, OF RECORDS OF SURVEY OF SAID COUNTY, DESCRIBED AS FOLLOWS:


THE EASTERLY, SOUTHEASTERLY AND SOUTHERLY 5.00 FEET OF SAID "NOT A PART" PARCEL LYING WESTERLY FROM THAT CERTAIN PARCEL OF LAND WHICH IS A PORTION OF MOUNTAIN AVENUE AS DEDICATED TO THE CITY OF ONTARIO PER DEED RECORDED _____, 2012 AS INSTRUMENT NO. _____ OF OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 1,361 SQUARE FEET OR 0.031 ACRES, MORE OR LESS.

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



THIS DESCRIPTION WAS PREPARED
BY ME OR UNDER MY DIRECTION:


JERALD E. ANHORN JR., L.S. 7159
EXPIRES 12-31-13

TEMPORARY
CONSTRUCTION
EASEMENT

EXHIBIT "B"



LOT 748

