

CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
OCTOBER 21, 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 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1049-221-01; 616 East Sunkist Street; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Majestic Realty Company; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario v. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

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

PLEDGE OF ALLEGIANCE

Council Member Dorst-Porada

INVOCATION

Brother Donald Sanders, Calvary Apostolic Tabernacle

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 16, 2014, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills September 7, 2014 through September 20, 2014 and **Payroll** September 7, 2014 through September 20, 2014, when audited by the Finance Committee.

3. DESIGNATION OF A VOTING DELEGATE FOR THE NATIONAL LEAGUE OF CITIES ANNUAL BUSINESS MEETING

That the City Council designate Alan D. Wapner as the City's voting delegate for the National League of Cities (NLC) Annual Business Meeting, scheduled for Saturday, November 22, 2014.

4. A RESOLUTION AMENDING THE APPENDIX TO THE CITY OF ONTARIO CONFLICT OF INTEREST CODE

That the City Council adopt a resolution amending the Appendix to the Conflict of Interest Code to update position classification titles and filing requirements for City employees.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED APPENDIX OF THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.

5. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18945 LOCATED AT THE SOUTHEAST CORNER OF MCCLEVE WAY AND MERRILL AVENUE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18945 located at the southeast corner of McCleve Way and Merrill Avenue within the Subarea 29 Specific Plan area.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18945, LOCATED AT THE SOUTHEAST CORNER OF MCCLEVE WAY AND MERRILL AVENUE.

6. AWARD OF BIDS FOR THE PURCHASE OF REPLACEMENT FLEET VEHICLES AND EQUIPMENT

That the City Council take the following actions:

- (A) Award Bid No. 466 to Fairview Ford of San Bernardino, California, in the amount of \$51,417 for the purchase and delivery of two (2) Ford F-350 cab and chassis trucks for the Utilities Department;
- (B) Award Bid No. 467 to Wondries Fleet Group of Alhambra, California, in the amount of \$193,157 for the purchase and delivery of six (6) 2014 Chevrolet Tahoe Police Pursuit Vehicles for the Police Department;

- (C) Award Bid No. 468 to Fairview Ford of San Bernardino, California, in the amount of \$104,020 for the purchase and delivery of three (3) Ford Explorers for the Police, Economic Development, and Recreation Departments, and one (1) Ford Fusion for the Police Department;
- (D) Award Bid No. 469 to Fairview Ford of San Bernardino, California, in the amount of \$104,553 for the purchase and delivery of four (4) Ford Interceptor SUV's for the Police Department;
- (E) Award Bid No. 471 to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$794,385 for the purchase and delivery of three (3) CNG Autocar Front Loaders for the Solid Waste Department;
- (F) Award Bid No. 374 to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$779,720 for the purchase and delivery of three (3) CNG Autocar Side Loaders for the Solid Waste Department;
- (G) Award Bid No. 394 to Fritts Ford of Riverside, California, in the amount of \$25,893 for the purchase of one (1) 12 passenger van for the Recreation Department;
- (H) Authorize the cooperative purchase and delivery for replacement of two (2) CNG Autocar Roll Off Refuse Trucks to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$466,541 consistent with the terms and condition of the City of Riverside Invitation for Bids (IFB) No. 7262 and Purchase Order No. 152012; and
- (I) Authorize the cooperative purchase and delivery of one (1) John Deere 244K Wheel Loader from John Deere Construction Retail Sales of Moline, Illinois, in the amount of \$103,243 consistent with the terms and condition of the National Joint Powers Alliance (NJPA) Cooperative Contract EM06-13.

7. ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 19 (COUNTRYSIDE PHASE 1 – SERVICES); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES

That the City Council:

- (A) Accept written petitions (on file with the Records Management Department) from Forestar Countryside, LLC and Forestar Development Company (collectively, the “landowners”), to create a community facilities district (“CFD”), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 19 (Countryside Phase 1 - Services); 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, December 2, 2014.

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.

8. A CONSTRUCTION CONTRACT FOR THE PRESSURE REDUCING STATION NO. 21 PROJECT LOCATED AT THE SOUTHWEST CORNER OF EUCLID AVENUE AND PHILLIPS STREET/CORA CONSTRUCTORS, INC.

That the City Council approve the plans and specifications; and award Contract No. UT 1112-08 (on file with the Records Management Department) to Cora Constructors, Inc. of Palm Desert, California for the construction of Pressure Reducing Station (PRS) No. 21 in the amount of \$371,711 plus a fifteen percent (15%) contingency of \$55,757 for a total amount of \$427,468, and authorize the City Manager to execute said contract, and file a notice of completion at the conclusion of all construction activities related to the project.

PUBLIC HEARINGS

9. A RESOLUTION REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE 1); AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES AND ADOPTION OF A RESOLUTION TO INCUR BONDED INDEBTEDNESS

Item continued to the November 18, 2014 City Council meeting beginning at 6:30 p.m.

10. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN ONTARIO EDISON HOLDINGS, LLC, AND THE CITY OF ONTARIO FOR THE DEVELOPMENT OF 330 RESIDENTIAL UNITS ON 79.91 ACRES OF LAND WITHIN THE LOW DENSITY RESIDENTIAL DISTRICT OF PLANNING AREAS 4, 5 AND 6 OF THE GRAND PARK SPECIFIC PLAN, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EDISON AVENUE AND TURNER AVENUE

That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA14-002, on file with the Records Management Department) between Ontario Edison Holdings, LLC, a Delaware Limited Liability Company, and the City of Ontario providing for the construction of up to 330 residential units on 79.91 acres of land within the Low Density Residential (LDR) district of Planning Areas 4, 5 and 6 of the Grand Park Specific Plan, generally located at the southeast corner of Edison Avenue and Turner Avenue (APNs: 0218-241-10, 11, 13, 14 and 17).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO EDISON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FILE NO. PDA14-002, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF 330 RESIDENTIAL UNITS ON 79.91 ACRES WITHIN THE LOW DENSITY RESIDENTIAL (LDR) DISTRICT OF PLANNING AREAS 4, 5 AND 6 OF THE GRAND PARK SPECIFIC PLAN, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EDISON AVENUE AND TURNER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0238-241-10, 11, 13, 14, 17, and 18).

STAFF MATTERS

GREATER ONTARIO TOURISM MARKETING DISTRICT ANNUAL REPORT

City Manager Boling

COUNCIL MATTERS

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

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
October 21, 2014

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

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1049-221-01; 616 East Sunkist Street; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Majestic Realty Company; Under negotiation: Price and terms of payment.

No Reportable Action Continue Approved

/ / / / / /

Disposition: _____

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

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *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

October 21, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: DESIGNATION OF A VOTING DELEGATE FOR THE NATIONAL LEAGUE OF CITIES ANNUAL BUSINESS MEETING

RECOMMENDATION: That the City Council designate Alan D. Wapner as the City's voting delegate for the National League of Cities (NLC) Annual Business Meeting, scheduled for Saturday, November 22, 2014.

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

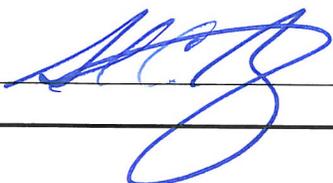
FISCAL IMPACT: There is no direct fiscal impact by taking this action, however, representation and participation in the upcoming business meeting will help establish NLC's policy on matters which may affect the City's finances.

BACKGROUND: The National League of Cities has scheduled their Annual Business Meeting for Saturday, November 22, 2014 during the annual Congress of Cities and Exposition in Austin, Texas. The Annual Business Meeting will include consideration of actions requiring approval of the membership of NLC.

The NLC bylaws require that the City's voting delegate be designated by the City Council.

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Nicholas Gonzalez
Department: Citywide Administration

City Manager
Approval: 

Submitted to Council/O.H.A. 10/21/2014

Approved: _____

Continued to: _____

Denied: _____

3

CITY OF ONTARIO

Agenda Report

October 21, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION AMENDING THE APPENDIX TO THE CITY OF ONTARIO CONFLICT OF INTEREST CODE

RECOMMENDATION: That the City Council adopt a resolution amending the Appendix to the Conflict of Interest Code to update position classification titles and filing requirements for City employees.

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

FISCAL IMPACT: The proposed action has no fiscal impact.

BACKGROUND: The City of Ontario originally adopted the Conflict of Interest Code in 1976, in compliance with Government Code Section 87000 et seq., with the last update occurring in September, 2012. The Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine if amendment or modifications are needed.

The Appendix to the City's Conflict of Interest Code designates those employees, officers and consultants who make or participate in the making of decisions which may affect the City's financial interests and therefore must disclose those interests in financial disclosure statements. These officials and employees must also disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

Staff has reviewed the City's Conflict of Interest Code and is recommending that the Appendix of the Code be amended to reflect any new or changed position classification titles since the last update, as well as update the respective filing categories. No other amendments to the Code are recommended at this time. A list of the proposed changes is attached and a full revised copy of the Appendix has been prepared and is available in the Records Management Department.

STAFF MEMBER PRESENTING: Jacob Green, Assistant City Manager

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

City Manager
Approval: 

Submitted to Council/O.H.A. 10/21/2014
Approved: _____
Continued to: _____
Denied: _____

4

Conflict of Interest Code Filer Changes

<u>Titles to add</u>	<u>Proposed Filing Categories</u>
Assistant City Manager	1, 2
Assistant Director Fleet & Municipal Services	2, 3, 6, 7
Assistant Library Director	2, 3, 6
Assistant Public Services Director	6
Associate Landscape Planner	2, 3, 6, 7
Benefits Supervisor	6
Building Plans Examiner	2, 7
EMS Nurse Administrator	6, 7
Fire Safety Specialist	6
Housing & Municipal Services Director	1, 2
Police Administrative Director	6
Senior Fire Safety Specialist	6
Senior Legislative Analyst	6
Solid Waste Division Manager	6
Solid Waste Supervisor	6
Utilities General Manager	1, 2
Water Production Manager	6, 7
Water Resources Manager	6, 7

Not currently active classifications (proposed for deletion)

Assistant General Manager
Assistant Solid Waste Director
Communications Manager
Debt Management/Special District Manager
Deputy City Manager
Deputy Finance Director
Equipment Services Director
Housing and Neighborhood Revitalization Director
Maintenance Superintendent
Purchasing Clerk
Purchasing Manager
Purchasing Supervisor
Recreation/Community Services Manager
Utilities and Solid Waste Director

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED APPENDIX OF THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.

WHEREAS, the Legislature of the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the City of Ontario (the "City") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, the City Council adopted a Conflict of Interest Code which was last amended on September 4, 2012, by Resolution No. 2012-071, in compliance with Government Code Section 81000 et seq.; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the City being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the City Council of, the proposed amended Appendix was provided to each designated employee and publicly posted for review; and

WHEREAS, a public meeting was held upon the proposed amended Appendix of the Conflict of Interest Code at a regular meeting of the City Council on October 21, 2014, at which all present were given an opportunity to be heard on the proposed amended Appendix.

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

SECTION 1. The City Council does hereby adopt the proposed amended Appendix of the Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Records Management Director along with the Conflict of Interest Code and available to the public for inspection and copying.

SECTION 2. That said amended Appendix of the Conflict of Interest Code shall become effective 30 days after adoption and approval.

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

PASSED, APPROVED, AND ADOPTED this 21st day of October, 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. was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 21, 2014 by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. duly passed and adopted by the Ontario City Council at their regular meeting held October 21, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

APPENDIX
CONFLICT OF INTEREST CODE
OF THE
CITY OF ONTARIO

Amended October 21, 2014

EXHIBIT "A"

The Mayor, Members of the City Council and Planning Commission, the City Manager, the City Attorney, the City Treasurer, and All Other City Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to the City's Code but are subject to the disclosure requirements of the Act (Government Code Section 87200 et sec.). [Regs. § 18730(b)(3)]

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the positions listed below are Other City Officials who manage public investments. These positions are listed here for information purposes only.

Administrative Services /Finance Director

Investment Officer

Financial Consultant

Individuals holding one of the above - listed positions may contact the FPPC for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The FPPC makes the final determination whether a position is covered by §87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Accounting Manager	4
Administrative Officer	6
Administrative Specialist	6
Assessment District Specialist	2, 3, 6, 7
Assistant City Clerk/Records Management Director	6
Assistant City Engineer	2, 3, 6, 7
Assistant City Manager	1, 2
Assistant Civil Engineer	2, 3, 6, 7
Assistant Director of Fleet & Municipal Services	2, 3, 6, 7
Assistant Engineer	2, 3, 6, 7
Assistant Library Director	2, 3, 6
Assistant Planner	2, 3, 6, 7
Assistant Public Services Director	6
Assistant Planning Director	2, 3, 6, 7
Assistant Recreation/Community Services Director	2, 3, 6
Associate Civil Engineer	2, 3, 6, 7
Associate Engineer	2, 3, 6, 7

Associate Landscape Planner	2, 3, 6, 7
Associate Library Director	6
Associate Planner	2, 3, 6, 7
Benefits Supervisor	6
Building Inspection Manager	2, 3, 6, 7
Building Official	2, 3, 6, 7
Building Plans Examiner	7
Building Plans Specialist	7
Business Operations Director	1, 2
City Attorney (not filing under Gov Code § 87200)	1, 2
City Engineer	2, 3, 6, 7
City Prosecutor	1, 2
Code Enforcement Director	2, 6, 7
Code Enforcement Manager	6, 7
Code Enforcement Officer	7
Combination Building Inspector	6, 7
Community& Public Services Director	2, 3, 6
Custodial Services Supervisor	6
Database Administrator	6
Departmental Administrator	1, 2

Deputy Fire Chief	2, 6, 7
Deputy Police Chief	2, 6, 7
Development Director	1, 2
Development Manager	3, 6
Economic Development Administrator	1, 2
Economic Development Coordinator	2
Economic Development Director	1, 2
Economic Development Manager	1, 2
Economic Development Specialist	2
Emergency Manager	5
EMS Nurse Administrator	6, 7
Engineering Assistant	6
Engineering Assistant - GIS	6
Environmental Programs Manager	5, 7
Environmental Water/Waste Engineer	2, 3, 5, 7
Facilities Maintenance Supervisor	6
Financial Analyst	5
Fire Battalion Chief	6, 7
Fire Chief	2, 6, 7
Fire Prevention Inspector	6, 7

Fire Safety Specialist	6
Fiscal Services Director	1, 2
Fleet Services Manager	6
Forensic Supervisor	6
Housing & Municipal Services Director	1, 2
Housing Director	2, 3, 6
Housing Manager	6
Human Resources Director	6
Information Technology Applications Manager	6
Information Technology Director	6
Information Technology Operations Manager	6
Information Technology Systems Manager	6
Internal Auditor	1
Landscape Planner	2, 3, 7
Library Director	6
Management Analyst	6
Management Services Director	6
Municipal Services Director	6
Municipal Services Manager	6
Museum Director	6

Neighborhood Improvement Specialist	1, 2
Parks and Maintenance Supervisor	6
Plan Check Engineer	2, 7
Planning Director	2, 3, 6, 7
Police Administrative Director	6
Police Captain	6, 7
Police Chief	6, 7
Police Lieutenant	6, 7
Principal Engineer	2, 3, 6, 7
Principal Planner	2, 3, 6, 7
Project Coordinator	2, 3, 6
Project Manager	2, 3, 6
Public Facility Maintenance Manager	6
Public Services Project Manager	6
Public Works Inspector	6, 7
Purchasing Assistant	6
Recreation /Community Services Supervisor	6
Redevelopment Manager	2, 3, 5
Redevelopment Program Analyst	2, 3
Revenue Services Director	6

Revenue Services Specialist	6
Revenue Services Supervisor	6
Risk Management Director	6
Senior Associate Civil Engineer	2, 3, 6, 7
Senior Associate Engineer	2, 3, 6, 7
Senior Code Enforcement Officer	7
Senior Combination Building Inspector	6, 7
Senior Deputy Fire Chief	2, 3, 7
Senior Environmental Technician	6
Senior Financial Analyst	5
Senior Fire Safety Specialist	6
Senior Human Resources Analyst	6
Senior Landscape Planner	6
Senior Legislative Analyst	6
Senior Management Analyst	6
Senior Neighborhood Improvement Specialist	1, 2
Senior Plan Check Engineer	2, 7
Senior Planner	2, 3, 6, 7
Senior Project Coordinator	2, 3, 6
Senior Project Manager	2, 3, 6

Senior Public Works Inspector	6, 7
Senior Systems Analyst	6
Senior Telecommunications Analyst	5
Senior Recreation/Community Services Supervisor	6
Solid Waste Division Manager	6
Sold Waste Supervisor	6
Street Maintenance Supervisor	6
Supervising Building Inspector	6, 7
Supervising Code Enforcement Officer	6, 7
Supervising Public Works Inspector	6, 7
Survey Party Chief	6, 7
Sustainability Program Manager	6
Telecommunications Manager	6
Traffic/Transportation Manager	2, 3, 6, 7
Utilities Administrative Services Manager	6
Utilities Engineering Division Manager	6
Utilities General Manager	1, 2
Utilities Operations Division Manager	6
Utilities Program Analyst	6
Utilities Project Manager	2, 3, 6

Utilities Supervisor	6
Water Production Manager	6, 7
Water Quality Specialist	6, 7
Water Resources Manager	6, 7
Water/Sewer Maintenance Manager	6, 7

BOARDS, COMMISSIONS AND COMMITTEES

Library Board of Trustees	2, 3, 6
Museum Board Members	6
Oversight Board to the Successor Agency	1, 2, 3, 6
Recreation and Parks Commission Members	2, 3, 6

CONSULTANTS

Consultants shall be included in the list of Designated Employees and shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of investments, business entities, sources of income, or real property, which the Designated Employee must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and business positions in, and sources of income from, business entities that do business or own real property within jurisdiction of the City, plan to do business or own real property within the jurisdiction of the City within the next year, or have done business or owned real property within the jurisdiction of the City within the past two (2) years.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the City.

Category 3: All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction, or the acquisition or sale of real property within the jurisdiction of the City, plan to engage in such activities within the jurisdiction of the City within the next year, or have engaged in such activities within the jurisdiction of the City within the past two (2) years.

Category 4: All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions.

Category 5: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the City.

Category 6: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's Department.

Category 7: All investments and business positions in, and sources of income from, business entities subject to the regulatory, permit, or licensing authority of the Designated Employee's Department, will be subject to such authority within the next year, or have been subject to such authority within the past two (2) years.

CITY OF ONTARIO

Agenda Report
October 21, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18945 LOCATED AT THE SOUTHEAST CORNER OF MCCLEVE WAY AND MERRILL AVENUE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18945 located at the southeast corner of McCleve Way and Merrill Avenue within the Subarea 29 Specific Plan area.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the Growth and Evolution of the City's Economy
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: None. All public infrastructure improvements required for this subdivision will be constructed by the developer at its sole cost.

BACKGROUND: Final Tract Map No. 18945, consisting of seventy-five numbered lots and eighteen lettered lots on 7.53 acres (as shown on Exhibit A), has been submitted by the developer Woodside O5S, LP, a California Limited Partnership of Riverside, California (Scott "Chip" Nelson, President).

Improvements will include AC pavement, curb, gutter, sidewalk, fire hydrants, sewer, water and recycled water mains, storm drain, street lights and traffic signals. The developer has entered into an improvement agreement with the City for the Final Tract Map and has posted adequate security to ensure construction of the required public improvements.

Tentative Tract Map No. 18945 was approved by the Planning Commission on July 22, 2014 and is consistent with the adopted Subarea 29 Specific Plan.

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

Prepared by: Steve Latino, P.E.
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 10/21/2014

Approved: _____

Continued to: _____

Denied: _____

5

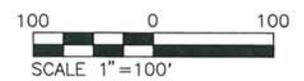
The map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT A SUBAREA 29, P.A. 13, TRACT 18945 LOTTING EXHIBIT



LEGEND
 TR 18945 TRACT BOUDNARY

TRACT NUMBER	NUMBERED LOTS	LETTERED LOTS
18945	75	18



PREPARED FOR:
WOODSIDE HOMES
 11870 PIERCE STREET, STE. 250
 RIVERSIDE, CA 92505
 PH: (951) 710-1900

PREPARED BY:

MDS CONSULTING	MORSE	17201 Rockwell Avenue Suite 300 Irvine, CA 92614
	SCHULTZ	Voice: 949-233-6821 Fax: 949-233-6316
PLANNERS ENGINEERS SURVEYORS		

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18945, LOCATED AT THE SOUTHEAST CORNER OF MCCLEVE WAY AND MERRILL AVENUE.

WHEREAS, Tentative Tract Map No. 18945, submitted for approval by the developer, Woodside O5S, LP, a California Limited Partnership was approved by the Planning Commission of the City of Ontario on July 22, 2014; and

WHEREAS, Tentative Tract Map No. 18945 consists of seventy-five numbered lots and eighteen lettered lots, being a subdivision of lot 1 of Tract 18913-1, as per map recorded in book 338, pages 1 through 7 inclusive of maps, in the Office of the Recorder of San Bernardino County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Tract Map No. 18945, said developer has offered an improvement agreement for the Final Tract Map, together with good and sufficient security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, the subdivider of the underlying Tract No. 18913-1, has previously prepared and recorded Covenants, Conditions and Restrictions (CC&Rs), and they have been reviewed and approved by the City Attorney's office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners.

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

1. That said improvement agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Tract Map No. 18945 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 21st day of October 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 October 21, 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 October 21, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
October 21, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: AWARD OF BIDS FOR THE PURCHASE OF REPLACEMENT FLEET VEHICLES AND EQUIPMENT

RECOMMENDATION: That the City Council take the following actions:

- (A) Award Bid No. 466 to Fairview Ford of San Bernardino, California, in the amount of \$51,417 for the purchase and delivery of two (2) Ford F-350 cab and chassis trucks for the Utilities Department;
- (B) Award Bid No. 467 to Wondries Fleet Group of Alhambra, California, in the amount of \$193,157 for the purchase and delivery of six (6) 2014 Chevrolet Tahoe Police Pursuit Vehicles for the Police Department;
- (C) Award Bid No. 468 to Fairview Ford of San Bernardino, California, in the amount of \$104,020 for the purchase and delivery of three (3) Ford Explorers for the Police, Economic Development, and Recreation Departments, and one (1) Ford Fusion for the Police Department;
- (D) Award Bid No. 469 to Fairview Ford of San Bernardino, California, in the amount of \$104,553 for the purchase and delivery of four (4) Ford Interceptor SUV's for the Police Department;
- (E) Award Bid No. 471 to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$794,385 for the purchase and delivery of three (3) CNG Autocar Front Loaders for the Solid Waste Department;
- (F) Award Bid No. 374 to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$779,720 for the purchase and delivery of three (3) CNG Autocar Side Loaders for the Solid Waste Department;

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

Prepared by: Michael Johnson
Department: HMS/Fleet Services

City Manager
Approval: 

Submitted to Council/O.H.A. 10/21/2014

Approved: _____

Continued to: _____

Denied: _____

6

- (G) Award Bid No. 394 to Fritts Ford of Riverside, California, in the amount of \$25,893 for the purchase of one (1) 12 passenger van for the Recreation Department;
- (H) Authorize the cooperative purchase and delivery for replacement of two (2) CNG Autocar Roll Off Refuse Trucks to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$466,541 consistent with the terms and condition of the City of Riverside Invitation for Bids (IFB) No. 7262 and Purchase Order No. 152012; and
- (I) Authorize the cooperative purchase and delivery of one (1) John Deere 244K Wheel Loader from John Deere Construction Retail Sales of Moline, Illinois, in the amount of \$103,243 consistent with the terms and condition of the National Joint Powers Alliance (NJPA) Cooperative Contract EM06-13.

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner**

FISCAL IMPACT: The Fiscal Year 2014-15 Adopted Budget includes appropriations in the amount of \$2,684,500 for the purchase of the replacement vehicles and equipment listed above. The total cost of the vehicles and equipment recommended for purchase is \$2,622,929.

BACKGROUND: The vehicles and equipment recommended for replacement in this action have outlived their useful life, and it is no longer cost effective to maintain them. They are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment while ensuring safe and reliable operation.

(A) Bid No. 466: Two (2) ¾ Ton Cab and Chassis Trucks for the Utilities Department

Two (2) ¾ Ton Cab and Chassis Trucks		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Fairview Ford	San Bernardino, CA	\$51,417
Frontier Ford	Santa Clara, CA	\$51,650
Rotolo Chevrolet	Fontana, CA	\$54,301
Raceway Ford	Riverside, CA	\$56,871

Staff recommends award to Fairview Ford, located in San Bernardino, California, in the amount of \$51,417 as the lowest responsive bidder to meet specifications to replace vehicles that are over 12 years old.

(B) Bid No. 467: Six (6) Chevrolet Tahoe Police Pursuit Vehicles for the Police Department

Six (6) Chevrolet Tahoe PPV's		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Wondries Fleet Group	Alhambra, CA	\$193,157
Rotolo Chevrolet	San Bernardino, CA	\$211,467
Folsom Chevrolet	Folsom, CA	\$278,851

Staff recommends award to Wondries Fleet Group, located in Alhambra, California, in the amount of \$193,157 as the lowest responsive bidder to meet specifications to replace vehicles that are over 7 years old.

(C) Bid No. 468: Three (3) Ford Explorers and One (1) Ford Fusion for the Police, Economic Development, and Recreation Departments

Three (3) Ford Explorers and One (1) Ford Fusion		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Fairview Ford	San Bernardino, CA	\$104,020
Frontier Ford	Santa Clara, CA	\$105,090
Raceway Ford	Riverside, CA	\$105,445
* Redlands Ford	Redlands, CA	\$84,143

Staff recommends award to Fairview Ford, located in San Bernardino, California, in the amount of \$104,020 as the lowest responsive bidder to meet specifications to replace vehicles that are over 8 years old. Redlands Ford was deemed non-responsive as they did not adhere to the prescribed online procurement bid procedures and requirements.

(D) Bid No. 469: Four (4) Ford Interceptor SUV’s for the Police Department

Four (4) Ford Interceptor SUV’s		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Fairview Ford	San Bernardino, CA	\$104,553
Frontier Ford	Santa Clara, CA	\$104,691
*Redlands Ford	Redlands, CA	\$105,305
Raceway Ford	Riverside, CA	\$105,352
Wondries Fleet Group	Alhambra, CA	\$105,551

Staff recommends award to Fairview Ford, located in San Bernardino, California, in the amount of \$104,553 as the lowest responsive bidder to meet specifications to replace vehicles that are over 8 years old. Redlands Ford was deemed non-responsive as they did not adhere to the prescribed online procurement bid procedures and requirements.

(E) Bid No. 471: Three (3) CNG Autocar Front Loading Refuse Trucks for the Solid Waste Department

Three (3) CNG Autocar Front Loading Refuse Trucks		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Los Angeles Truck Centers	Whittier, CA	\$794,385
*E-W Truck & Equipment Co.	San Diego, CA	\$803,668

Staff recommends award to Los Angeles Truck Centers, LLC, located in Whittier, California, in the amount of \$794,385. The purchase of the Autocar model ACX64 cab and chassis with an AMREP body continues the City’s ongoing effort to standardize the solid waste fleet. E-W Truck & Equipment Company was deemed non-responsive as they did not meet the required bid specifications.

(F) **Bid No. 374: Three (3) CNG Autocar Model ACX64 with AMREP Side Loading Bodies for Solid Waste Department**

In August 2013, the City solicited and received two (2) bids for CNG automated side loading solid waste trucks. The results are as follows:

Three (3) CNG Autocar Front Loading Refuse Trucks		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Los Angeles Truck Centers	Whittier, CA	\$779,720
*E-W Truck & Equipment Co.	San Diego, CA	\$782,884

On October 1, 2013, the City Council authorized the purchase of three (3) Autocar Side Loading refuse trucks from Los Angeles Truck Centers, LLC, located in Whittier, California, in the amount of \$779,720. The awarded bid states the City reserves the right to order more, less, or no items at the “per unit cost” stated in the bid proposal. City Staff and Los Angeles Freightliner have negotiated the purchase of three (3) additional units at the same price per unit as previously ordered in the FY 2013-14 budget. The total amount for this recommended purchase is \$779,720 to replace vehicles that are 11 years old.

(G) **Bid No. 394: One (1) 12 Passenger Van for the Recreation Department**

In October 2013, the City solicited and received six (6) bids for a 12 passenger van. The results are as follows:

One (1) 12 Passenger Van		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Fritts Ford	Riverside, CA	\$25,893
Raceway Ford	Riverside, CA	\$26,064
Fairview Ford	San Bernardino, CA	\$26,250
Rotolo Chevrolet	Fontana, CA	\$26,829
Wondries Fleet Group	Alhambra, CA	\$26,997
Empire Nissan	Ontario, CA	\$33,550

On December 3, 2013, the City Council authorized the purchase of one (1) 12 passenger van from Fritts Ford, located in Riverside, California, in the amount of \$25,893. The awarded bid states the City reserves the right to order more, less, or no items at the “per unit cost” stated in the bid proposal. City Staff and Fritts Ford have negotiated the purchase of one (1) additional unit at the same price per unit as previously ordered in the FY 2013-14 budget. The total amount for this recommended purchase is \$25,893 to replace a vehicle that is 17 years old.

(H) **Two (2) CNG Autocar Roll Off trucks for the Solid Waste Department**

Staff recommends the purchase of two (2) CNG Autocar Roll Off Refuse Trucks from Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$466,541 consistent with the terms and conditions of the City of Riverside Invitation for Bids (IFB) No. 7262 and Purchase Order No. 152012. This cooperative purchasing opportunity will allow the City to pool its procurement power with another public agency to obtain prices lower than would otherwise be possible. City of Ontario Municipal Code Section 2-6.11 (b) (3) allows for the purchase of supplies and equipment through cooperative purchasing

when another governmental agency generally follows the provisions of Government Code Section 54201 through 54204.

(I) One (1) John Deere 244K Wheel Loader for the Utilities and Parks Departments

<u>Supplier (Location)</u>	<u>Bid Amount</u>
John Deere Construction Retail Sales, Moline, Illinois	\$103,243

The cooperative purchase and delivery of this replacement equipment is recommended from John Deere Construction Retail Sales, located in Moline, Illinois, for the amount of \$103,243 consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract EM06-13. City of Ontario Municipal Code Section 2-6.11(b) (3) allows for the purchase of supplies and equipment through cooperative purchasing when another governmental agency generally follows the provisions of Government Code Section 54201 through 54204. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain prices lower than would otherwise be possible. The John Deere 244K Loader recommended for purchase replaces a similar piece of equipment that is 30 years old.

CITY OF ONTARIO

Agenda Report
October 21, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 19 (COUNTRYSIDE PHASE 1 – SERVICES); AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES

RECOMMENDATION: That the City Council:

- (A) Accept written petitions (on file with the Records Management Department) from Forestar Countryside, LLC and Forestar Development Company (collectively, the “landowners”), to create a community facilities district (“CFD”), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 19 (Countryside Phase 1 - Services); 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, December 2, 2014.

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: In accordance with the City Council’s long standing direction that development of the New Model Colony generate sufficient revenues to fund its required City Services without reliance on the existing financial resources of the Old Model Colony, the use of Mello-Roos financing in connection with the Countryside development is projected to generate approximately \$640,000 per year, at build-out, to fund City services. As proposed, the maximum annual tax rate on the first phase of the project’s 461 single-family detached units is \$1,387. The use of Mello-Roos financing is critical in achieving the City Council’s goal of “Ensure the Development of a Well Planned, Balanced, and

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. 10/21/2014
Approved: _____
Continued to: _____
Denied: _____

7

Self-Sustaining Community in the New Model Colony.” The use of Mello-Roos financing for the Countryside Development will not generate funds for facilities, and bonds will not be issued as part of this formation. The CFD is being formed pursuant to the provisions of the Forestar Countryside, LLC’s Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

BACKGROUND: The Mello-Roos Community Facilities Act of 1982 provides 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 finance various kinds of public infrastructure facilities and government services. Government services that may be included in a community facilities district include police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, open space and flood and storm drain protection services, and maintenance and operation of any real property or tangible property with an estimated useful life of five or more years that is owned by the governmental entity.

Forestar Countryside, LLC and Forestar Development Company, together, a member of NMC Builders, have provided written petitions to the City requesting formation of a community facilities district for their Countryside project. The Countryside project addresses the development of approximately 85 acres located north of Deer Creek Channel, south of Riverside Drive, east of Cucamonga Creek Channel and west of Archibald Avenue. At build-out, the development is projected to include 461 detached residential units.

Under the Mello-Roos Act, the initial steps in the formation of a community facilities district normally involve resolutions declaring the City’s intention to establish a community facilities district, levy special taxes, and issue bonds. As noted, the issuance of bonds is not being contemplated for this project at this time, so there is no resolution to issue bonds associated with this action. 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, December 2, 2014 to consider the matter.

Included, as part of the resolution of intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 19 (Countyside Phase 1 - Services). 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, and City staff have presented and discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners.

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 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 (collectively, the "Petitions") from each of Forestar Countryside, LLC ("Forestar Countryside") and Forestar Development Company ("Forestar Development") and, together with Forestar Countryside (the "Landowners"), 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 services to be financed by the Community Facilities District; and

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

WHEREAS, Forestar Development has previously submitted to the City the fee required by the City to be used to compensate the City Council and the City for all costs incurred in conducting proceedings to create the Community Facilities District, which the City Council has determined to be sufficient for such purpose.

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

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

SECTION 2. The City Council hereby finds that the Petitions are signed by the requisite number of owners of land proposed to be included in the Community Facilities District.

SECTION 3. The City Council proposes to establish a community facilities district pursuant to 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 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 19 (Countryside Phase 1 - Services)".

SECTION 5. 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 described under the caption "Incidental Expenses" on Exhibit A hereto. No facilities are proposed to be financed by the Community Facilities District.

SECTION 6. Except where funds are otherwise available, a special tax sufficient to pay for all 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 obligation to pay the special tax may not be prepaid and permanently satisfied. 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.

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 City Council hereby fixes Tuesday, December 2, 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 8. 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 9. 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 10. Each officer of the City who is or will be responsible for providing one or more of the proposed types of 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 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 Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 11. 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 12. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 21st day of October 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 October 21, 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 October 21, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A

SERVICES AND INCIDENTAL EXPENSES

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 costs associated with the creation of the Community Facilities District, 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.

Exhibit B

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT No. 19
(COUNTRYSIDE PHASE 1 – SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 19 (Countryside Phase 1 – Services) ("CFD No. 19") 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. 19, 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 as may hereinafter be set forth have the following meanings:

"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. 19: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 19 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); 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. 19 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 19; and amounts estimated or advanced by the City or CFD No. 19 for any other administrative purposes of CFD No. 19, 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 on 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.

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

“**CFD No. 19**” means City of Ontario Community Facilities District No. 19 (Countryside Phase 1 – Services).

“**City**” means the City of Ontario, California.

“**City Council**” means the City Council of the City, acting as the legislative body of CFD No. 19.

“**County**” means the County of San Bernardino.

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

“**Gated Apartment Community Dwelling Unit**” means a Multiple Family Dwelling Unit within a gated community that, within such community, is primarily served by private interior streets.

“**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 below that can be levied in any Fiscal Year on such Assessor’s Parcel of Taxable Property.

“**Multiple Family Dwelling Unit**” means a Unit within any residential building containing two or more dwelling units, including attached condominiums, townhomes, duplexes, triplexes, and apartments, but excluding Gated Apartment Community Dwelling Units.

“**Non-Residential**” means any buildings that are for commercial lodging use, commercial retail use, institutional use (e.g., churches, private schools), commercial restaurant use, office use, or industrial use.

“**Non-Residential Property**” means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction was issued after January 1, 2014, and before May 1 of the prior Fiscal Year, for a Non-Residential use.

“**Property Owner Association Property**” means, for each Fiscal Year, property within the boundaries of CFD No. 19 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 that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Property.

“**Public Property**” means, for each Fiscal Year, property within the boundaries of CFD No. 19 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 Property” means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2014, and before May 1 of the prior Fiscal Year.

“Services” means the services authorized to be financed, in whole or in part, by CFD No. 19: 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.

“Special Tax” means the special tax authorized by the qualified electors of CFD No. 19 to be levied within the boundaries of CFD No. 19.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to pay the cost of the Services, Administrative Expenses, and an amount equal to Special Tax delinquencies based on the historical delinquency rate for Special Taxes, as determined by the CFD Administrator.

“Single Family Detached Dwelling Unit” means any residential building containing only one Unit on one legal lot, including single family residences and single family detached residential condominium units.

“Square Footage” or **“Sq. Ft.”** means, with respect to a building, the gross floor area square footage reflected on the original construction building permit for such building, plus any square footage subsequently added to a building 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 Assessor’s Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 19 which are not exempt from the Special Tax pursuant to law or Section E below.

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

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2014-15, all Taxable Property within CFD No. 19 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Apartment Community Dwelling Unit) or Non-Residential 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.

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax for each Assessor's Parcel classified as Taxable Property shall be determined by reference to Table 1 below.

**TABLE 1
MAXIMUM SPECIAL TAX**

Land Use Class	Maximum Special Tax Fiscal Year 2014-15
Residential Property:	
Single Family Detached Dwelling Unit	\$1,387 per Unit
Multiple Family Dwelling Unit	\$1,202 per Unit
Gated Apartment Community Dwelling Unit	\$1,008 per Unit
Non-Residential Property	\$0.26 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2015, the Maximum Special Tax to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

In some instances an Assessor's Parcel of Taxable Property may contain more than one Land Use Class. The Maximum Special Tax levied on an Assessor's Parcel shall be the sum of the Maximum Special Tax for all Units of Residential Property and Square Footage 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. The Special Tax shall then be levied Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.

E. EXEMPTIONS

Notwithstanding anything in this Rate and Method of Apportionment to the contrary, no Special Tax shall be levied on Public Property or Property Owner Association Property.

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 19 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 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 Taxes 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. TERM OF SPECIAL TAX

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 19.

CITY OF ONTARIO

Agenda Report
October 21, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: A CONSTRUCTION CONTRACT FOR THE PRESSURE REDUCING STATION NO. 21 PROJECT LOCATED AT THE SOUTHWEST CORNER OF EUCLID AVENUE AND PHILLIPS STREET

RECOMMENDATION: That the City Council approve the plans and specifications; and award Contract No. UT 1112-08 (on file with the Records Management Department) to Cora Constructors, Inc. of Palm Desert, California for the construction of Pressure Reducing Station (PRS) No. 21 in the amount of \$371,711 plus a fifteen percent (15%) contingency of \$55,757 for a total amount of \$427,468, and authorize the City Manager to execute said contract, and file a notice of completion at the conclusion of all construction activities related to the project.

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

FISCAL IMPACT: The adopted Capital Improvement Program Budget includes appropriations from the Water Capital Fund for this project. The recommended contract award is for the bid amount of \$371,711 plus a 15% contingency of \$55,757 for a total amount of \$427,468. There is no impact to the General Fund.

BACKGROUND: The City's water system consists of five separate hydraulic pressure zones. The pressure zones are interconnected through sixteen pressure reducing stations which allow water to be transferred from a higher zone to a lower zone. The City's Water Master Plan has identified certain new pressure reducing stations that are required to improve water system reliability and maintain adequate system pressures during peak demand periods. This project, located on the southwest corner of Euclid Avenue and Phillips Street, provides for construction of a pressure reducing station between the higher 1212 and the lower 1074 pressure zones. This PRS will provide water operations staff with the flexibility to move water from one zone to another when applicable. A location map is provided for reference.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Peter Tran
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 10/21/2014

Approved: _____

Continued to: _____

Denied: _____

8

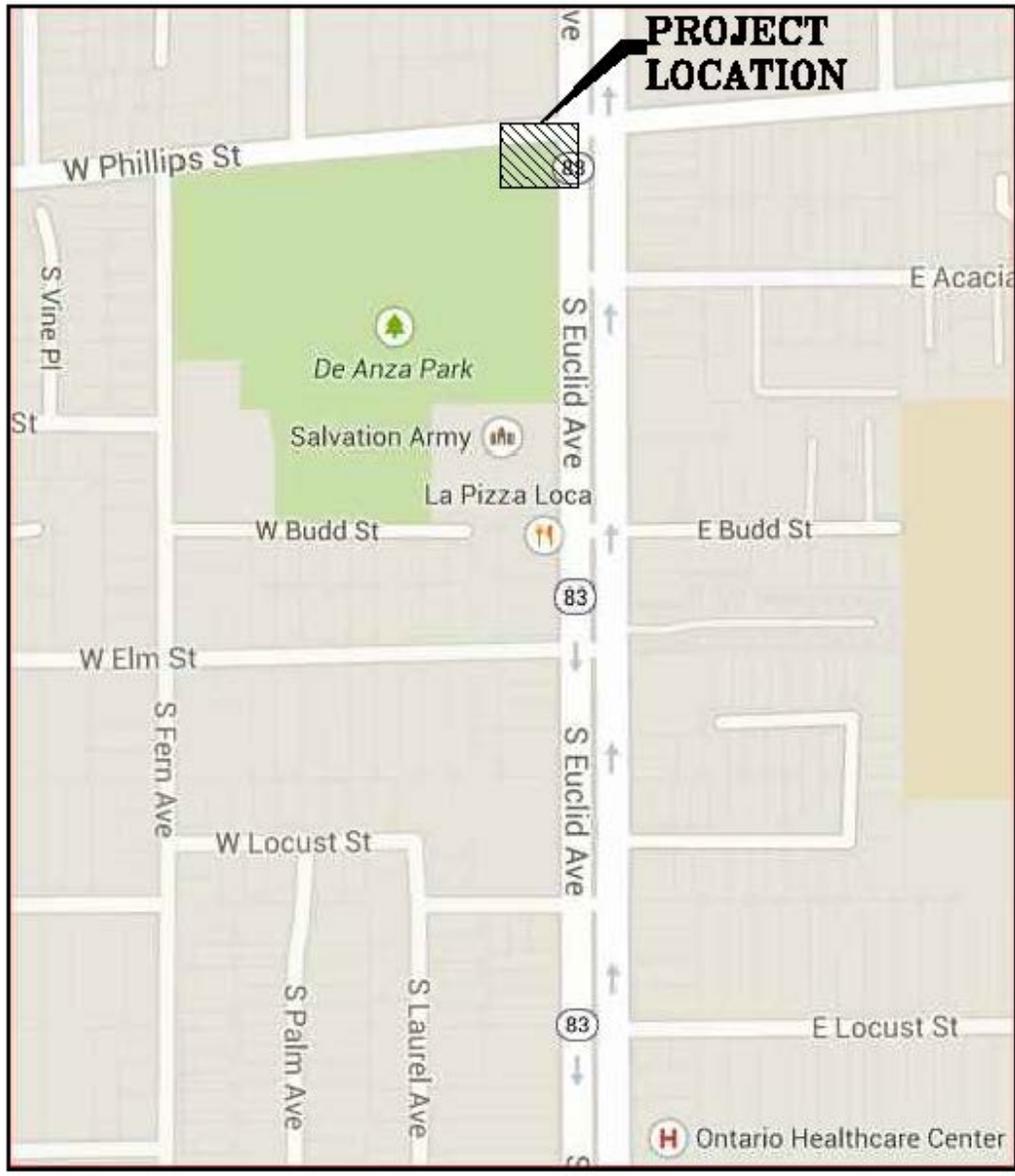
On August 7, 2014, eight bids were received for the PRS #21 Project at the southwest corner of Euclid Avenue and Phillips Street. The bids ranged from \$371,711 to \$559,138. The lowest five bids are summarized below:

<u>Vendor</u>	<u>Location</u>	<u>Amount</u>
Cora Constructors, Inc.	Palm Desert, CA	\$371,711
Zusser Company, Inc.	Los Angeles, CA	\$426,350
Vido Samarzich, Inc.	Alta Loma, CA	\$448,075
Mehta Mechanical Company, Inc.	La Palma, CA	\$452,511
Hypa Engineering, Inc.	Sherman Oaks, CA	\$479,900
Norstar Plumbing & Engineering, Inc.	Alta Loma, CA	\$513,513
Genesis Construction	Hemet, CA	\$520,777
Bali Construction, Inc.	South El Monte, CA	\$559,138

Staff recommends the award to Cora Constructors, Inc. of Palm Desert, California based on their expertise and ability to perform the work in a timely manner and successful completion of this type of project in the past.

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

**OMUC CONTRACT NO. UT1112-08
PRESSURE REDUCING STATION (PRS) #21
AT EUCLID AVE. (SR-83) & PHILLIPS ST.**



LOCATION MAP
N.T.S.

CITY OF ONTARIO

Agenda Report
October 21, 2014

SECTION:
PUBLIC HEARINGS

SUBJECT: A RESOLUTION REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE 1); AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES AND ADOPTION OF A RESOLUTION TO INCUR BONDED INDEBTEDNESS

RECOMMENDATION: Item continued to the November 18, 2014 City Council meeting beginning at 6:30 p.m.

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. _____

Approved: _____

Continued to: 11/18/2014

Denied: _____

CITY OF ONTARIO

Agenda Report
October 21, 2014

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN ONTARIO EDISON HOLDINGS, LLC, AND THE CITY OF ONTARIO FOR THE DEVELOPMENT OF 330 RESIDENTIAL UNITS ON 79.91 ACRES OF LAND WITHIN THE LOW DENSITY RESIDENTIAL DISTRICT OF PLANNING AREAS 4, 5 AND 6 OF THE GRAND PARK SPECIFIC PLAN, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EDISON AVENUE AND TURNER AVENUE

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA14-002, on file with the Records Management Department) between Ontario Edison Holdings, LLC, a Delaware Limited Liability Company, and the City of Ontario providing for the construction of up to 330 residential units on 79.91 acres of land within the Low Density Residential (LDR) district of Planning Areas 4, 5 and 6 of the Grand Park Specific Plan, generally located at the southeast corner of Edison Avenue and Turner Avenue (APNs: 0218-241-10, 11, 13, 14 and 17).

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 will provide funding from a community facilities district (CFD) for additional City services required to support the Grand Park Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the New Model Colony development.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon
Department: Planning

City Manager Approval: 

Submitted to Council/O.H.A. 10/21/2014

Approved: _____

Continued to: _____

Denied: _____

10

BACKGROUND: Ontario Edison Holdings, LLC, a Delaware Limited Liability Company (“Ontario Edison Holdings”), and the City recognized that the financial commitment required for construction in the New Model Colony (NMC) is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Ontario Edison Holdings is entering into a Development Agreement with the City providing for the development of up to 330 dwelling units. The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the Ontario Edison Holdings project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 79.91 acres of land consisting of 48.82 acres for residential development, 4.81 acres for a portion of the high school, and 26.28 acres for a portion of the Great Park as shown in Exhibit A (Grand Park Specific Plan Map). The Agreement grants Ontario Edison Holdings a vested right to develop their project as long as Ontario Edison Holdings complies with the terms and conditions of the Grand Park Specific Plan and EIR.

The main points of the Development Agreement are as follows:

- Term: Ten years with a five year option.
- Assignment: Assignable with all terms and conditions applying to the assignee. The City has conditional approval and City will assess a processing fee.
- Fees:
- Development Impact: Varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits.
- Public Services Funding: \$1,820/unit fee due in two installments:
- 1) \$910 within 30 days following the City’s start of construction of Fire Station No. 9.
 - 2) \$910 upon issuance of remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2015.
- 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: As required by the General Plan, Owner will supply five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees.

Acquisition of Grand Park Property:

The Grand Park acreage (approximately 26.34 acres) identified in Tentative Tract Map 18662 will be transferred to the City. Through a separate acquisition agreement with the Owner, the City will acquire the park acreage at “fair market value.” The City will compensate the Owner with Development Impact Fee (DIF) credit for use by the Owner as credit against Owner’s DIF obligation for Parkland Facilities Development fees.

Housing:

Provide affordable housing as required by the General Plan through construction, rehabilitation, or by paying an in-lieu fee.

Compliance:

Owner will submit an annual monitoring report which the City will review for compliance. The City will assess a review/approval processing fee. If Owner is found to be in compliance, the City will issue a Certificate of Compliance. If noncompliance is identified, a letter of correction will be issued.

Schools:

Must satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.

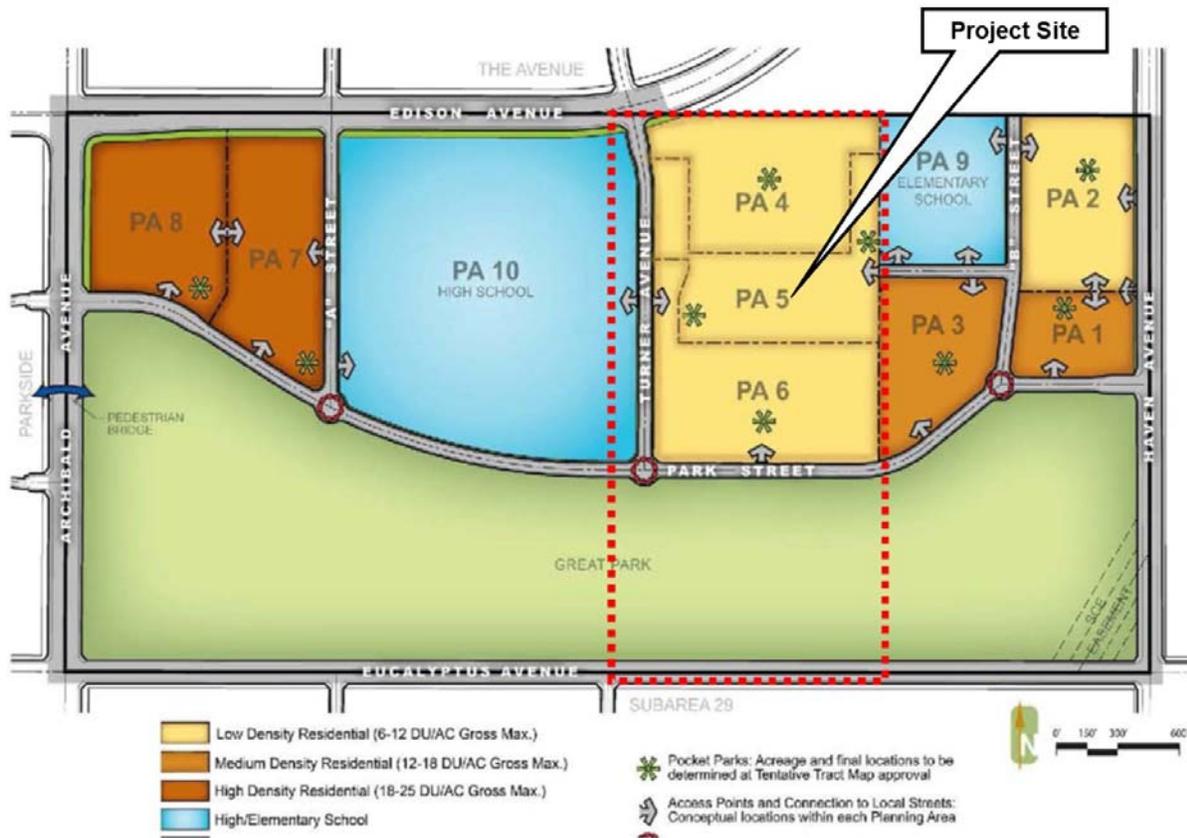
Termination:

The City may terminate the Agreement if substantial evidence is found of noncompliance.

In considering the application at their meeting of September 23, 2014, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreements previously approved for NMC development and, with a 6 to 0 vote, recommended approval of the Development Agreement to the City Council.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Grand Park Specific Plan, for which an Environmental Impact Report (SCH# 2012061057) was certified by the City Council on January 21, 2014. This Agreement introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference.

EXHIBIT "A" THE GRAND PARK SPECIFIC PLAN



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO EDISON HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FILE NO. PDA14-002, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF 330 RESIDENTIAL UNITS ON 79.91 ACRES WITHIN THE LOW DENSITY RESIDENTIAL (LDR) DISTRICT OF PLANNING AREAS 4, 5 AND 6 OF THE GRAND PARK SPECIFIC PLAN, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF EDISON AVENUE AND TURNER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0238-241-10, 11, 13, 14, 17, and 18).

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, attached to this Resolution, marked Exhibit "A" and incorporated herein by this reference, is the proposed Development Agreement between Ontario Edison Holdings, LLC, a Delaware Limited Liability Company, and the City of Ontario, File No. PDA14-002, concerning those 79.91 acres of land generally located at the southeast corner of Edison Avenue and Turner Avenue and as legally described in the attached Development Agreement. Hereinafter in this Resolution, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on the 21st day of January 2014, the City Council of the City of Ontario certified the Grand Park Specific Plan EIR (SCH# 2012061057); and

WHEREAS, on the 21st day of February 2014, the City Council of the City of Ontario adopted Ordinance No. 2985 approving the Grand Park Specific Plan; and

WHEREAS, on September 23, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 6 to 0 to recommend approval of the Development Agreement to the City Council; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Grand Park Specific Plan, for which an Environmental Impact Report (SCH# 2012061057) was certified by the City Council on January 21, 2014. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on October 21, 2014, the City Council of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date; and

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

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

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on October 21, 2014, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 79.91 acres of land within the Grand Park Specific Plan, generally located at the southeast corner of Edison Avenue and Turner Avenue and is presently utilized for dairy and agriculture uses; and

b. The property to the north is within The Avenue Specific Plan, zoned Low and Medium Density Residential and developed with dairy and agriculture uses. The property to the south is located within the Subarea 29 Specific Plan, zoned PA 24 (Single Family Conventional – 5,000 SF Min. lot size) and developed with dairy and agriculture uses. The property to the east is located within the Grand Park Specific Plan, zoned PA 9 (Elementary School), PA 3 (Medium Density Residential), and Great Park and developed with dairy and agriculture uses. The property to the west is located within the Grand Park Specific Plan, zoned PA 10 (High School) and Great Park, and developed with dairy and agriculture uses; and

c. The Development Agreement establishes parameters for the development of the Grand Park residential projects. The Development Agreement also grants Ontario Edison Holdings, LLC, a Delaware Limited Liability Company, 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 Grand Park Specific Plan; and

d. The Development Agreement focuses on 79.91 acres, consisting of 48.82 acres for residential development, 4.81 acres for a portion of the High School and 26.28 acres for a portion of the Great Park within the Grand Park Specific Plan; and

e. The Development Agreement will provide for development of up to 330 residential units as established for Planning Ares 4, 5 and 6 of the Grand Park Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in the Grand Park Specific Plan EIR certified by the City Council on January 21, 2014.

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 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)

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

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

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

Ontario Edison Holdings L.L.C.

a Delaware limited liability company

_____, **2014**

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. ____

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 201_ by and between the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Ontario Edison Holdings, LLC, a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, 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 and the Agreement in that Grand Park Specific Plan (State Clearinghouse No. 2012061057 (the "FEIR")). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Grand Park Specific Plan; and

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

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

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

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

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

COVENANTS

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

1. 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 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto, including but not limited to the "Construction Agreement Amendment" defined as that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

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

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

- (a) specific plans and specific plan amendments;
- (b) tentative and final subdivision and parcel maps;
- (c) development plan review;
- (d) conditional use permits (including model home use permits), public use permits and plot plans;
- (e) zoning;
- (f) grading and building permits.

1.1.6 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of

the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

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

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

1.1.20 “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.

1.1.21 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.22 “General Plan” means the General Plan adopted on January 27, 2010, by Ordinance No.____.

1.1.23 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract Number 18662 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.1.24 “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.

1.1.25 "Model Units" means a maximum of 12 units constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.26 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.27 "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.

1.1.28 "Phase 1 Recycled Water System Improvements" means the extension of the recycled water system to serve the Property in Haven Avenue Chino Avenue to Edison Avenue as described in the attached Exhibit F.

1.1.29 "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.

1.1.30 "Production Unit(s)" means all units constructed for sale and occupancy by OWNER and excludes a specified number of Model Units constructed by OWNER for promotion of sales.

1.1.31 "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.

1.1.32 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.33 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.342 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Grand Park Specific Plan."

1.1.35 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the approval of a final tract map or issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.36 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

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

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

1.2 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” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Conceptual Phasing Plan

Exhibit “F” — Infrastructure Improvements Exhibit

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:

(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least fifty percent (50%) of the actual number of residential units permitted under this Agreement; and

(c) OWNER is not then in uncured default of this Agreement.

2.4 Assignment.

2.4.1 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 and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.4.3 Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

2.4.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.5 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 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment To Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

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

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

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with

respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 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 Boling, City Manager
City of Ontario
303 East "B" Street
Ontario California, California 91764

with a copy to:

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

If to OWNER:

Ontario Edison Holdings, LLC
160 South Old Springs Road, Suite 170
Anaheim Hills, CA 92808

Attn: Richard Cisakowski, Manager

With a copy to:

Law Office of David L. Colgan
18101 Von Karman Avenue, Suite 1800
Irvine, CA 92612

Attn: David L. Colgan

(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 THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 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 and the availability of interim improvements and services. 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 Section 3.3 above.

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").

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
 - (b) Increase the density or intensity of use of the Property as a whole;
- or,
- (c) Increase the maximum height and size of permitted buildings; or,
 - (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
 - (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any

subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;
- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the

extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Infrastructure and Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 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. CITY shall not issue building permits for the construction of Production Units within the Property unless and until CITY receives payments from NMC Builders in the amount estimated by CITY to be necessary and sufficient for the completion of the design and construction of Fire Station No. 9. If OWNER requests that CITY issue building permits for any units, including Model Units, prior to CITY's receipt of payments from NMC Builders in an amount deemed by CITY to be necessary and sufficient for the design and construction of Fire Station No. 9, then prior to and as a condition precedent to CITY's issuance of any such building permits for the construction of any units, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's Fire Station No. 9 Capital Contribution allocable to such unit(s).

3.7.2 Continuing Requirement for the Funding of Regional Water and Storm Water Treatment Improvements. Prior to, and as a condition precedent to,

CITY's approval of any final Tract Maps for the Property, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for the number of units included in the respective Tract Map. Prior to, and as a condition precedent to, CITY's issuance of grading permits for any grading of the Property or prior to, and as a condition precedent to, CITY's approval of any final Tract Maps for the Property, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the Project. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project for Tract Map Number 18662, as defined in the Construction Agreement Amendment and as of the Effective Date of this Agreement such net acreage has been determined to be 10.41 net acres.

3.7.3 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the "Francis Zone Water Loop." OWNER shall be responsible for the construction of the necessary extension of permanent master planned potable and recycled water utility infrastructure to the Property to the extent that such potable and recycled water utility infrastructure has not been constructed by NMC Builder LLC or others. CITY and OWNER agree that OWNER may only initiate grading after recordation of the Final Tract Map. OWNER also 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.

3.7. OWNER agrees that development of the Project shall require the construction of a significant portion of Storm Drain facilities known as the "Turner Avenue Storm Drain" from the northern boundary of the Property to the connection with the County Line Channel. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities. OWNER also 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 Storm Drain facilities in Turner Avenue to the County line Channel as described in Exhibit F.3.7.5 OWNER agrees that development of the Project shall require the construction of a portion of Eucalyptus Avenue and the traffic signal improvements at the intersection of Edison and Turner Avenues. OWNER also acknowledges and agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the master planned street improvements as described in Exhibit F.

3.7.6 OWNER agrees that development of the Property shall require the design and construction of a significant portion of the permanent master planned recycled water utility infrastructure, described in Exhibit F as the "Phase 1 Recycled Water Improvements," consisting generally of the construction of permanent master planned recycled water utility infrastructure in Haven Avenue and a pressure reducing station (PRS) located near Chino and Haven Avenues. CITY and OWNER agree that Phase 1 Recycled Water Improvements"

3.7.7 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. 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.

3.7.8 OWNER agrees that the development of the Property shall require the design and construction of master planned sewer improvements in Eucalyptus Avenue to Archibald Avenue. 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 sewer facilities as described in Exhibit F.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulations to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement Amendment. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement Amendment, Sections 3.8.1 and 3.8.2 shall control the acquisition of

the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or

compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

3.11 Specific Plan Charge. Pursuant to Government Code section 65456, the City Council may consider adopting a specific plan charge upon persons seeking CITY approvals that are required to be consistent with the Specific Plan. Any such charges shall, in the aggregate, defray, but not exceed, the estimated cost of preparation, adoption, and administration of the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.). As nearly as can be estimated, the charges shall be a prorated amount in accordance with the applicant's relative benefit derived from the Specific Plan. If such charges are adopted, the City shall use such charges to reimburse the applicant(s) who originally paid the cost of preparing the Specific Plan (in this case, the OWNER, who acquired the property from such applicant), including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent such applicant(s) paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit for any portion of the Property. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.

4.2.3 Parkland and Quimby Act Fees. 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 in Tract Number 18662 consisting of approximately 2.49 net acres shall satisfy OWNER's additional park development requirement. This developed park area shall be transferred to a homeowner's association and the homeowner's association shall be responsible for all maintenance of the development park area.

4.2.4 Acquisition of Grand Park Property. The Grand Park acreage identified in Tract Number 18662 shall be transferred to the CITY as a "Non-Program Interest" as provided in Section 3.6 of the Construction Agreement Amendment. CITY shall acquire, pursuant to a separate acquisition agreement with OWNER, the Grand Park acreage of approximately 26.34 net acres from OWNER at the Fair Market Value as set forth in Section 3.6.2 of the Construction Agreement Amendment, with such acquisition to occur no earlier than 12 months after the Effective Date of this Agreement. Compensation to OWNER for such property may be in the form of Development Impact Fee Credit for use by OWNER as a credit against OWNER's Development Impact Fee obligation in the Parkland Facilities Development Fee category or other form of compensation paid directly to OWNER, as stated in the separate acquisition agreement.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the New Model Colony will be as approved by the CITY. 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 Production Units for each such Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract Number 18662.

4.3.1.1 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.

4.3.2 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 between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

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

CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.3.3.1 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 forty-four percent (44%) of the eligible design and construction costs for the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time, the estimated eligible costs for the design and construction of the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue is one million, eight hundred thousand dollars (\$1,800,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY's DIF Program for the improvements, whichever is less."

4.4 Affordable Housing Requirement

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.4.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "**Substantial rehabilitation**" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit

for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "**Affordability In-Lieu Fee**". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Thirty One Cents (\$2.31) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars and Two Cents (\$2.02) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Thirtyone Cents (\$2.31) and the Two Dollars and Two Cents (\$2.02) per square foot amounts shall automatically be increased annually, commencing on July 1, 2015, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building permit for any affordable unit, the City and OWNER shall enter into an Affordable Housing Agreement. Affordability shall be assured for a period of forty five (45) years for for-sale units and fifty five (55) years for rentals. For rental units, base rents shall be established by the City and rental adjustments required by the City shall be performed on an annual basis. In addition, the Affordable Housing Agreement shall impose maximum occupancy limits of 2 occupants per bedroom plus 1 additional occupant per dwelling unit, and a requirement for the owner or tenant to properly maintain each dwelling unit.

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the City shall be required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.4 Schools Obligations.

4.4.1 Written Evidence of Compliance with Schools Obligations.

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

that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.5 Public Services Funding Fee.

4.5.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to the residents of each Project in a timely manner, OWNER shall pay to CITY a “**Public Services Funding Fee.**” The Public Services Funding Fee shall apply to residential and non-residential uses as set forth below.

4.5.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Eight Hundred Twenty dollars (\$1,820.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER’s option, as follows:

4.5.2.1 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 based upon the “**Maximum Development Density**” of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement or the number of units described on B Tract maps, if approved. The First Installment shall be due and payable 30 days following City’s start of construction of Fire Station No. 9. If OWNER applies for the first production building permit, prior to CITY’s start of construction of Fire Station No. 9 then the First Installment is due for all residential units based on the Maximum Development Density of the OWNER’s Project (or number of units described on B Tract maps) at the time the first production building permit is issued.

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

4.5.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Ten dollars (\$910)

per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2015. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.5.2.3 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 the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2015. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.6 Net MDD/Water Availability Equivalents.

4.6.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.6.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the issuance of each building permit. The amount of Net MDD Water Availability Equivalents required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.6.3 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to an OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.7 Storm Water Capacity Availability.

4.7.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability in the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.7.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

4.7.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.8 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association or public financing mechanism, as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney. If requested by OWNER, the CITY shall use good faith efforts to require other developments within the Specific Plan to join such homeowners' association or public financing mechanism for the purpose of maintaining such parks and open spaces that are open to the public.

4.10 Compliance with Public Benefits Requirements.

4.10.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold

OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map, the property subject to Tract Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,387.00 per Single Family Detached Dwelling Unit, \$1,202.00 per Multiple-Family Dwelling Unit, \$1,008.00 per Gated Apartment Community Dwelling Unit, and \$.26 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

6.1.2 Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

- (1) Recommendation of the Planning staff;
- (2) Affirmative vote of at least four (4) members of the Planning Commission; or
- (3) Affirmative vote of at least three (3) members of the City Council.

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4 Public Hearing. The Planning Commission shall conduct a hearing at which the OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon the OWNER.

6.1.5 Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not the OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6 Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that the OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with the CITY's rule for consideration of appeals in zoning matters generally.

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default.

The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

- (a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
- (b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
- (c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

- (a) Money damages are unavailable against CITY as provided in Section 8.1 above.
- (b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in

reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial

determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 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 the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 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.

11.2 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.

11.3 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. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 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.

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

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

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one

owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

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

11.9 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.

11.10 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.

11.11 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.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 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.

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

11.15 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.

11.16 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.

11.17 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 instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

"OWNER"

Ontario Edison Holdings, L.L.C.,
a Delaware limited liability company

By: _____
Richard Cisakowski
Its: Manager

Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Al Boling
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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)

personally known to me – **OR** – 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.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title or Type of Document

- Partner(s) Limited
- General

Number Of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Date Of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE WEST ½ OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND.

ASSESSOR'S PARCEL NO: 0218-241-10-0-000

PARCEL 2:

THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

ASSESSOR'S PARCEL NO: 0218-241-11-0-000

PARCEL 3:

ALL THAT PORTION OF THE EAST ½ OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST ¼ OF THE SOUTHEAST ¼ THENCE WEST ON THE CENTER LINE OF EDISON STREET, 352.39 FEET; THENCE SOUTH AT RIGHT ANGLES, 147 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 30 FEET; THENCE WEST PARALLEL WITH THE CENTER LINE OF SAID EDISON STREET, 20 FEET; THENCE NORTH 30 FEET; THENCE EAST PARALLEL WITH THE CENTER LINE OF EDISON STREET, 20 FEET TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO: 0218-241-17-0-000 AND 0218-241-18-0-000

PARCEL NO. 4:

THE EAST ¼ OF THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE SEPTEMBER 16, 1873. EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST ¼ OF THE SOUTHEAST ¼; THENCE WEST ALONG THE CENTER LINE OF EDISON STREET, 352.39 FEET; THENCE SOUTH AT RIGHT ANGLES, 147 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 30 FEET; THENCE WEST, PARALLEL WITH THE CENTER LINE OF SAID EDISON STREET, 20 FEET; THENCE NORTH 30 FEET; THENCE EAST, PARALLEL WITH THE CENTER LINE OF SAID EDISON STREET, 20 FEET TO THE TRUE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO: 0218-241-13-0-000 AND 0218-241-14-0-000

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Map showing Property and its location

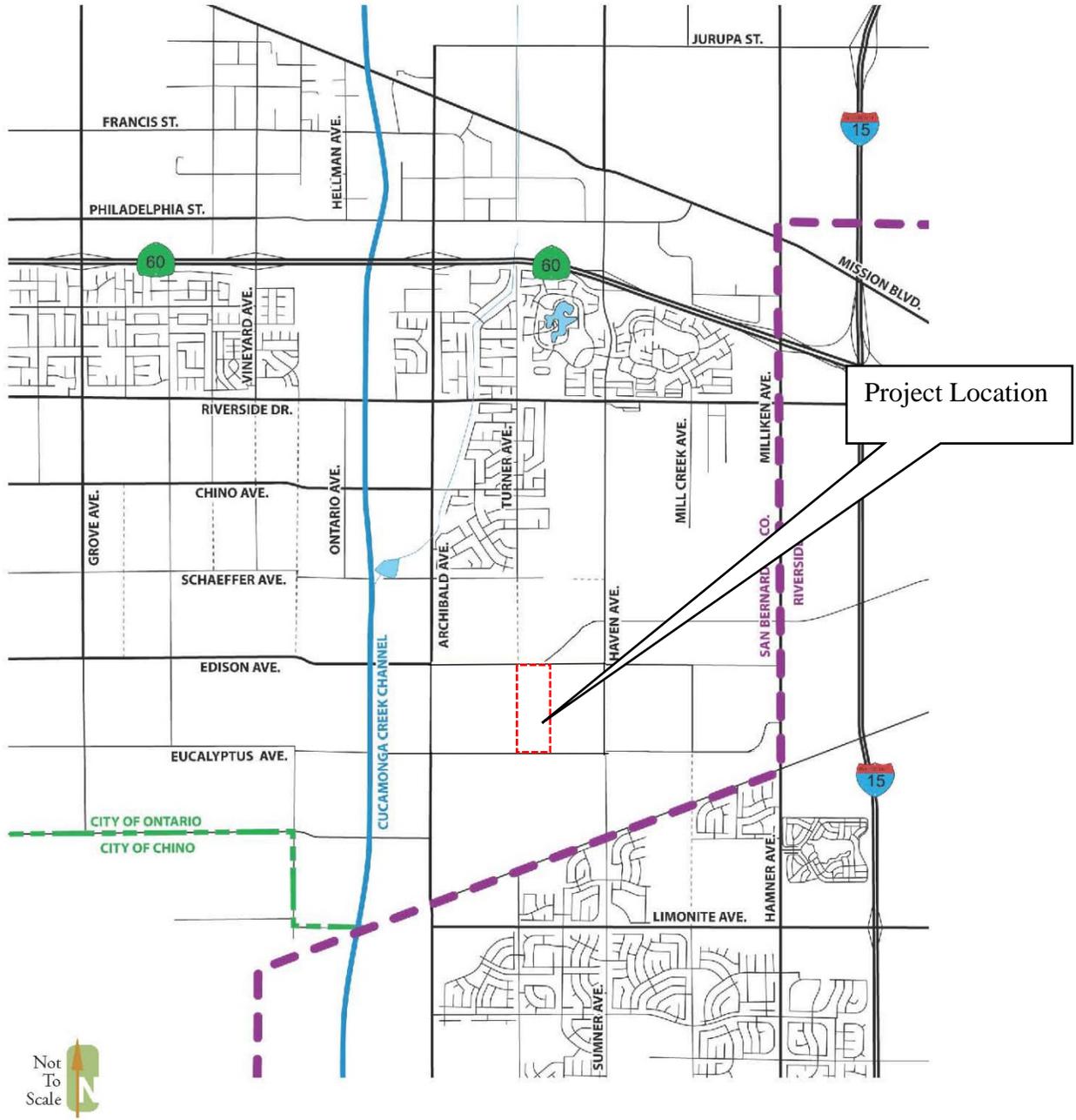


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On December 16, 2013, the Planning Commission:

- a) Issued Resolution No. PC13-082 recommending City Council adopt and certify the Grand Park Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC13-083 recommending City Council approval of the Grand Park Specific Plan (File No. PSP12-001).

On February 4, 2014, the City Council:

- a) Issued Resolution No. 2014-002 certifying the Grand Park Environmental Impact Report;
- c) Issued Ordinance No. 2985 approving the Grand Park Specific Plan (File No. PSP12-001).

On September 23, 2014, the Planning Commission:

- a) Issued Resolution No. PC14-090 recommending City Council approval of the Development Agreement (File No. PDA14-002);
- b) Issued Resolution No. PC14-089 approving Tentative Tract Map 18662 (File No. PMTT13-014).

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. The Grand Park Specific Plan Environmental Impact Report, Resolution No. 2014-002
2. The Grand Park Specific Plan (File No. PSP12-001, Ordinance No. 2985
3. Tentative Tract Map No. 18662, Resolution No. PC13-***
4. City of Ontario Municipal Code
 - a. Six – Sanitation & Health
 - b. Seven – Public Works
 - c. Eight – Building Regulations
 - d. Nine – Development Code
 - e. Ten – Parks & Recreation

EXHIBIT "E" TO DEVELOPMENT AGREEMENT

Conceptual Phasing Plan

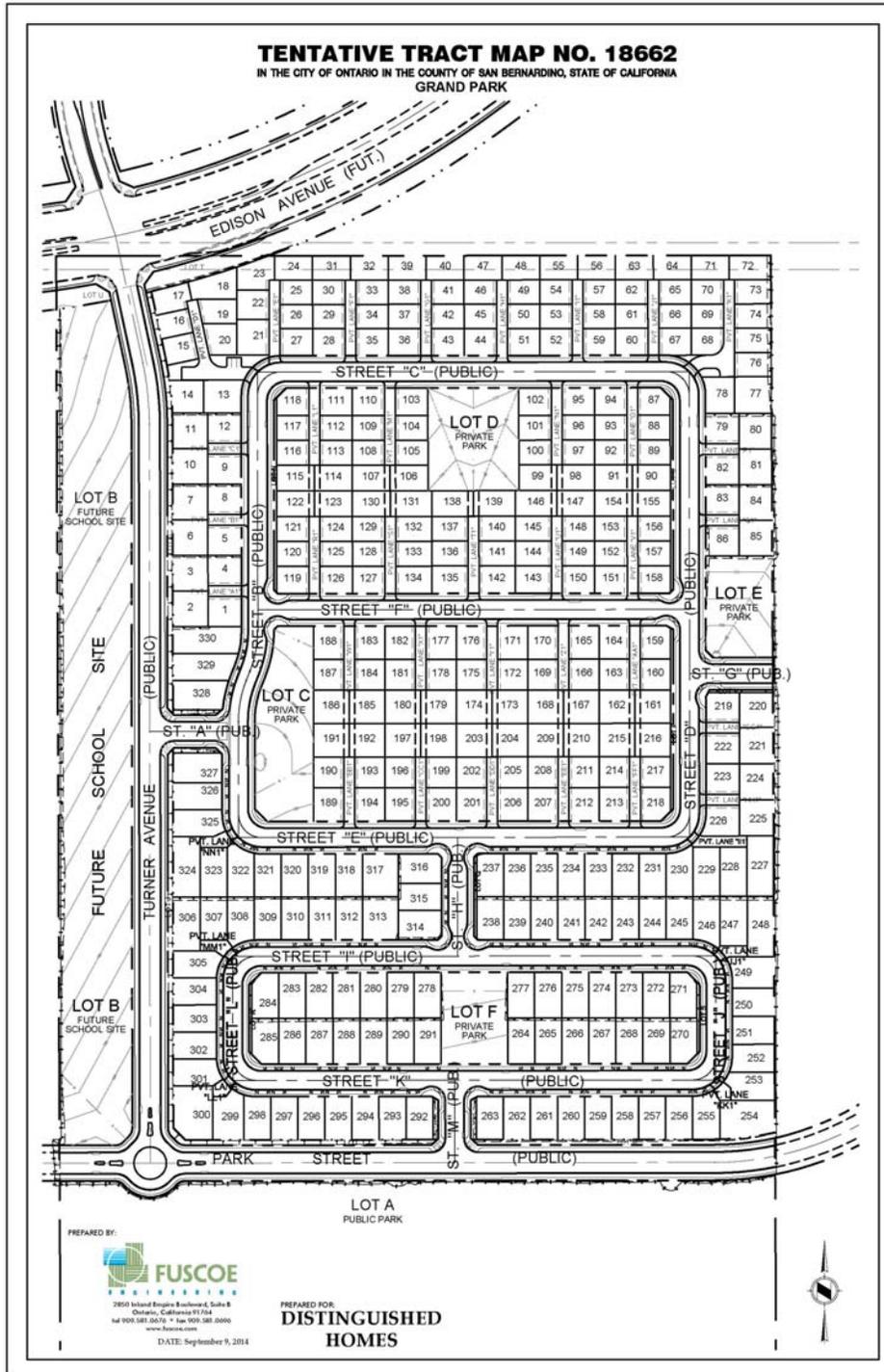


Exhibit "F" Infrastructure Improvements

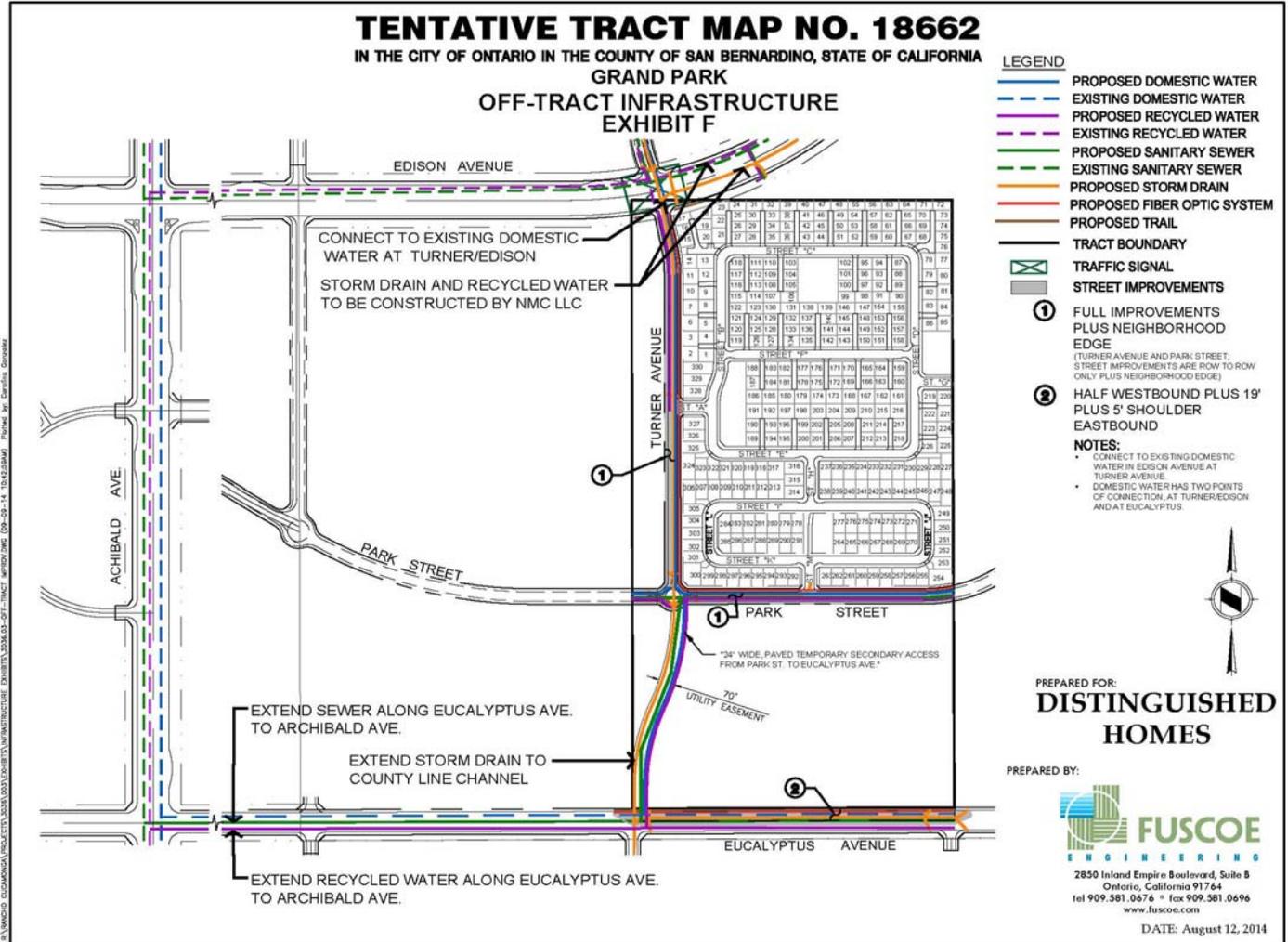


Exhibit "F" Continued Recycled Water Loop Improvements

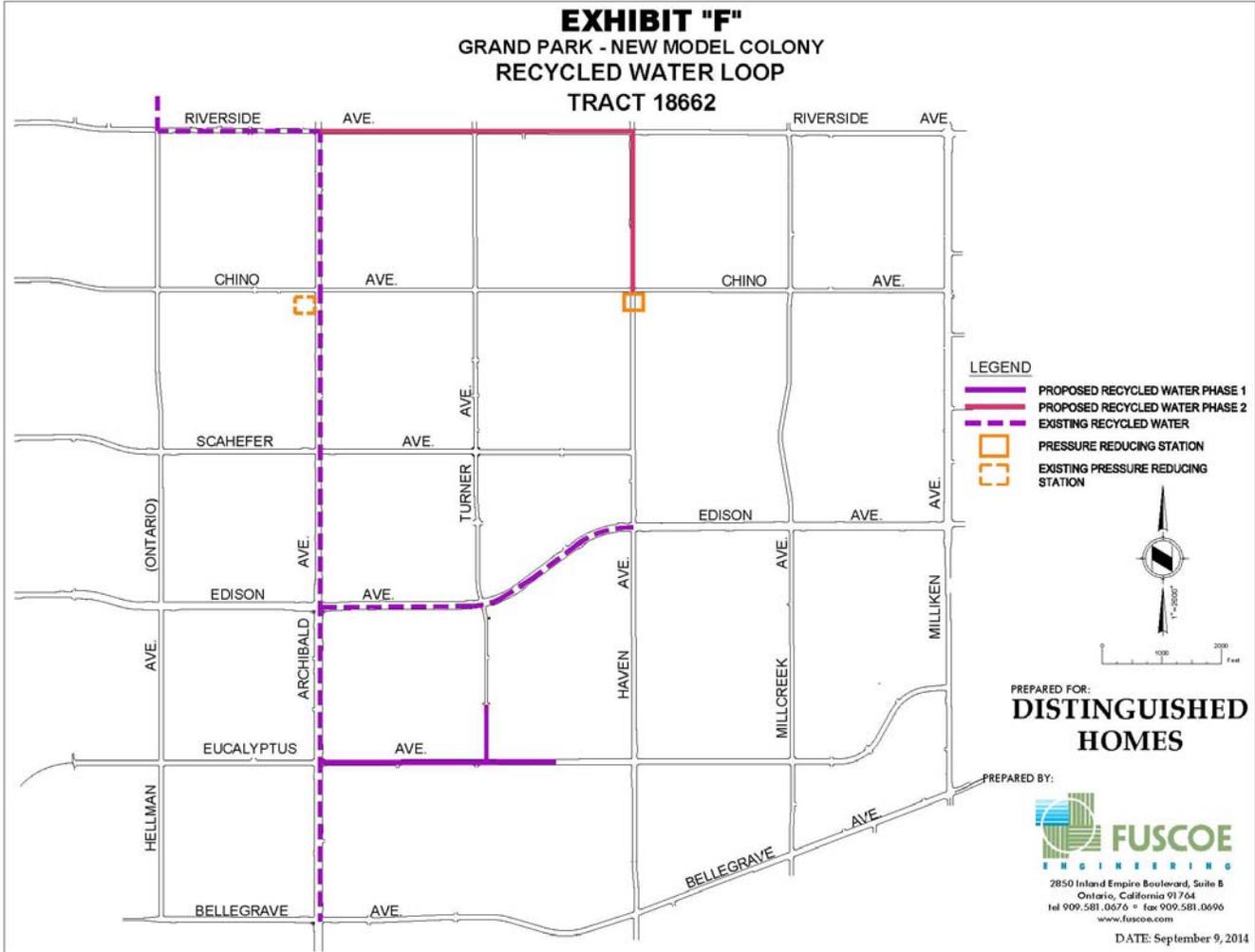


Exhibit "F" Continued Stromwater Area

