

CITY OF ONTARIO
CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR
AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY
AGENDA
APRIL 3, 2018

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Ruben Valencia
Council Member



Scott Ochoa
City Manager

John E. Brown
City Attorney

Sheila Mautz
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, Valencia, 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: 1048-363-04; 404 North Euclid Avenue, Ontario ; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: WESEE Collective, LLC; Under negotiation: Price and terms of payment.
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1046-601-08; 150 South Euclid Avenue, Upland; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Euclid and 8th, LLC; Under negotiation: Price and terms of payment.

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

PLEDGE OF ALLEGIANCE

Mayor pro Tem Wapner

INVOCATION

Rabbi Zari Sussman, Temple Sholom Ontario

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.

SPECIAL CEREMONIES

RECOGNITION OF CONSERVATION POSTER CONTEST WINNERS

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 March 6, 2018, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills February 11, 2018 through February 24, 2018 and **Payroll** February 11, 2018 through February 24, 2018, when audited by the Finance Committee.

3. A PROFESSIONAL SERVICES AGREEMENT WITH ADMINSURE, INC. FOR WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES INCLUDING MEDICAL BILL REVIEW AND UTILIZATION REVIEW SERVICES/ADMINSURE, INC.

That the City Council authorize the City Manager to execute a four year agreement (on file with the Records Management Department) with AdminSure, Inc. of Ontario, CA, for Workers' Compensation Third Party Claims Administration Services including medical bill review and utilization review services, in the amount of \$290,400 from May 1, 2018 through April 30, 2019, and not to exceed a 3% escalation each subsequent year.

4. MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ONTARIO AND THE ONTARIO POLICE MANAGEMENT GROUP AFFECTING TERMS AND CONDITIONS OF EMPLOYMENT DURING THE PERIOD OF JANUARY 1, 2018 TO JUNE 30, 2022; AND APPROVE THE RESOLUTION MODIFYING PAYMENT OF THE EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR EMPLOYEES IN POLICE SAFETY BARGAINING UNITS

That the City Council approve and authorize the City Manager to execute a four-year Memorandum of Understanding (on file in the Records Management Department) regarding wages, hours and other terms and conditions of employment between the City of Ontario and the Ontario Police Management Group (OPMG); and authorize the City Manager to make any non-substantive changes which may be necessary to implement the agreement; and adopt resolutions modifying the Employer Paid Member Contributions (EPMC) to the California Public Employees Retirement System (CalPERS) consistent with the terms and conditions of the police labor agreements and pursuant to California Government Code Section 20691.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE AND POLICE MANAGEMENT UNITS.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE AND POLICE MANAGEMENT UNITS.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE AND POLICE MANAGEMENT UNITS.

5. PURCHASE AND IMPLEMENTATION OF A NEW UTILITY BILLING SOFTWARE SOLUTION USING CIS INFINITY FROM ADVANCED UTILITY SYSTEMS/ADVANCED UTILITY SYSTEMS

That the City Council authorize the City Manager to execute a multi-year agreement with Advanced Utility Systems, a subsidiary of Harris Computer Systems of Ottawa, Ontario, Canada for utility billing software, in the amount of \$2,861,813 and authorize a 25% project contingency of \$715,453 for a combined project total amount not to exceed \$3,577,266.

6. A CONSTRUCTION CONTRACT FOR THE QVC WAY STREET IMPROVEMENT PROJECT/HILLCREST CONTRACTING, INC.

That the City Council approve the plans and specifications and award a construction contract (on file with the Records Management Department) to Hillcrest Contracting, Inc. of Corona, California for the QVC Way Street Improvement Project (ST1718) in the bid amount of \$443,339 plus a 10% contingency of \$44,334 for a total authorized amount of \$487,673; and authorize the City Manager to execute said contract and related documents and file a Notice of Completion at the conclusion of the construction activities.

7. A PROFESSIONAL SERVICES AGREEMENT FOR FINANCIAL AUDIT SERVICES/LANCE, SOLL & LUNGHARD

That the City Council authorize the City Manager to execute a three year professional services agreement (on file with the Records Management Department) with the accounting firm of Lance, Soll & Lunghard, LLP, of Brea, California, in the amount of \$296,360 to perform annual auditing services for the City of Ontario, the Ontario Housing Authority, and the Successor Agency of the former Redevelopment Agency; and authorize extension of the agreement for up to two additional years subject to City Council approved budgets.

8. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT AMENDMENT (SECOND AMENDMENT – FILE NO PDA05-001) BETWEEN THE CITY OF ONTARIO AND EDENGLLEN ONTARIO LLC, TO CLARIFY AND UPDATE THE TIMING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE, THE DEVELOPMENT IMPACT FEE PROVISIONS, AND THE EXTENSION OF THE TERM OF THE AGREEMENT TO SERVE TRACT MAP NO’S 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, AND 18791, GENERALLY LOCATED NORTH OF CHINO AVENUE, SOUTH OF RIVERSIDE DRIVE, EAST OF MILL CREEK AVENUE, AND WEST OF THE SCE UTILITY CORRIDOR, WITHIN PLANNING AREAS 1 THROUGH 8 OF THE EDENGLLEN SPECIFIC PLAN (APN: 0218-171-15; 0218-921-07, 08, 16, 19, 22, AND 30; 0218-931-01 THROUGH 25; 218-931-75 THROUGH 89; 0218-932-01 THROUGH 21; 0218-933-01 THROUGH 17; 0218-934-01 THROUGH 24; 0218-935-01--THROUGH 04; 0218-935-12 THROUGH 19; 0218-935-22 THROUGH 38; 0218-941-01 THROUGH 39; 0218-941-55 THROUGH 93; 0218-951-01 THROUGH 70; 0218-952-19 THROUGH 82; 0218-954-01 THROUGH 42; 0218-955-01 THROUGH 42; 0218-956-01 THROUGH 58; AND, 0218-961-07 THROUGH 88)

That the City Council consider and adopt an ordinance approving the Second Amendment, File PDA05-001, (on file with the Records Management Department) to the Development Agreement between the City of Ontario and Edenglen Ontario LLC, a Delaware Limited Liability Company, to clarify and update the phasing of the construction of public infrastructure to serve Tract Map No’s 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, and 18791 and extend the term of the Development Agreement.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT, FILE NO. PDA05-001, BETWEEN THE CITY OF ONTARIO AND EDENGLLEN ONTARIO, LLC, TO CLARIFY AND UPDATE THE TIMING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE, THE DEVELOPMENT IMPACT FEE PROVISIONS, AND THE EXTENSION OF THE TERM OF THE AGREEMENT TO SERVE TRACT MAP NO’S 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, 18791, AND 17564, GENERALLY LOCATED NORTH OF CHINO AVENUE, SOUTH OF RIVERSIDE DRIVE, EAST OF MILL CREEK AVENUE, AND WEST OF THE SCE UTILITY CORRIDOR, WITHIN PLANNING AREAS 1 THROUGH 8 OF THE EDENGLLEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-171-15; 0218-921-07, 08, 16, 19, 22, AND 30; 0218-931-01 THROUGH 25; 0218-931-75 THROUGH 89; 0218-932-01 THROUGH 21; 0218-933-01 THROUGH 17; 0218-934-01 THROUGH 24; 0218-935-01 THROUGH 04; 0218-935-12 THROUGH 19; 0218-935-22 THROUGH 38; 0218-941-01 THROUGH 39; 0218-941-55 THROUGH 93; 0218-951-01 THROUGH 70; 0218-952-19 THROUGH 82; 0218-954-01 THROUGH 42; 0218-955-01 THROUGH 42; 0218-956-01 THROUGH 58; 0218-961-07 THROUGH 88.

9. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-002) BETWEEN THE CITY OF ONTARIO AND CVRC ONTARIO INVESTMENTS, LLC, FOR THE POTENTIAL DEVELOPMENT OF UP TO 480 RESIDENTIAL UNITS (FILE NO. PMTT16-004/TT 19966) ON 111.10 ACRES OF LAND WITHIN THE RESIDENTIAL SINGLE FAMILY DISTRICT OF PLANNING AREAS 2, 3, 4 AND 5 OF THE ARMSTRONG RANCH SPECIFIC PLAN, LOCATED ON THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND ONTARIO AVENUE (APNs: 218-101-01, 218-101-02, 218-101-07, 218-101-08, 218-102-10, AND 218-102-11)

That the City Council consider and adopt an ordinance approving a Development Agreement, File No. PDA16-002, (on file with the Records Management Department) between the City of Ontario and CVRC Ontario Investments, LLC, for the potential development of up to 480 residential units (File No. PMTT16-004/TT 19966) on 111.10 acres of land within the Residential Single Family district of Planning Areas 2, 3, 4 and 5 of the Armstrong Ranch Specific Plan, located on the southwest corner of Riverside Drive and Ontario Avenue.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-002) BETWEEN THE CITY OF ONTARIO AND CVRC ONTARIO INVESTMENTS, LLC, FOR THE POTENTIAL DEVELOPMENT OF UP TO 480 RESIDENTIAL UNITS (FILE NO. PMTT16-004/TT 19966) ON 111.10 ACRES OF LAND WITHIN THE RESIDENTIAL SINGLE FAMILY DISTRICT OF PLANNING AREAS 2, 3, 4 AND 5 OF THE ARMSTRONG RANCH SPECIFIC PLAN, LOCATED ON THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND ONTARIO AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: 0218-101-01, 0218-101-02, 0218-101-07, 0218-101-08, 0218-102-10, AND 0218-102-11.

10. CONSTRUCTION CONTRACT FOR EXPANSION OF THE CNG FACILITY AT THE ONTARIO MUNICIPAL SERVICES CENTER (OMSC)

That the City Council approve the plans and specifications and award Contract No. MS 2015-16-1 (on file with the Records Management Department) to Fueling and Service Technologies, Inc. (FASTECH) of Buena Park, CA, for the construction of OMSC CNG Facility Expansion in the amount of \$131,136 plus a 15% contingency of \$19,670, for a total amount of \$150,806; 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.

II. CONSTRUCTION CONTRACT FOR RECYCLED WATER MAIN IMPROVEMENTS IN RIVERSIDE DRIVE AND JURUPA STREET

That the City Council approve the plans and specifications and award Contract No. UT 1002 (on file with the Records Management Department) to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, for the construction of the Recycled Water Improvements for Riverside Drive and Jurupa Street in the amount of \$3,312,219 plus a 15% contingency of \$496,833, for a total amount of \$3,809,052; 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.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

12. CONFIRMATION OF APPOINTMENT OF DEPUTY POLICE CHIEF DEREK WILLIAMS TO POLICE CHIEF

That the City Council confirm the City Manager's appointment of Derek Williams to the position of Police Chief.

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
April 3, 2018

ROLL CALL: Wapner __, Bowman __, Dorst-Porada__, Valencia __, Mayor / Chairman Leon __.

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1048-363-04; 404 North Euclid Avenue, Ontario ; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: WESEE Collective, LLC; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
//	//	//

Disposition: _____

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 1046-601-08; 150 South Euclid Avenue, Upland; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Euclid and 8th, LLC; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
//	//	//

Disposition: _____

Reported by:

City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH ADMINSURE, INC. FOR WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION SERVICES INCLUDING MEDICAL BILL REVIEW AND UTILIZATION REVIEW SERVICES

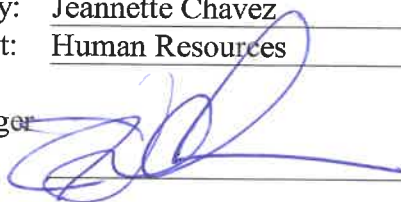
RECOMMENDATION: That the City Council authorize the City Manager to execute a four year agreement (on file with the Records Management Department) with AdminSure, Inc. of Ontario, CA, for Workers' Compensation Third Party Claims Administration Services including medical bill review and utilization review services, in the amount of \$290,400 from May 1, 2018 through April 30, 2019, and not to exceed a 3% escalation each subsequent year.

COUNCIL GOALS: Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The annual cost of the recommended agreement is \$290,400 and includes a one-time data conversion fee of \$8,000. The transition of services to AdminSure, Inc. would increase the City's cost by approximately \$7,400 for Fiscal Year 2018-19; however, the services provided will include enhanced and improved oversight of claims management as well as medical bill review and utilization review services. Funding has been budgeted in Fiscal Year 2017-18 Budget for the proposed agreement, and future increases will be included in the baseline budget adoption, not to exceed 3% per year.

BACKGROUND: After 14 years with the current third party administrator for workers' compensation services, it was determined it was prudent to request proposals for claims administration services, including medical bill review and utilization review services, to compare costs and services being offered in the industry. On February 23, 2018, the City received seven proposals for workers' compensation third party claims administration services. The firms that submitted a proposal include:

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

Prepared by: Jeannette Chavez
Department: Human Resources
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

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AdminSure, Inc.
Acclamation Insurance Management Services
Athens Administrators
JT2 Integrated Resources
Corvel
Tristar (Current Claims Administrator)
York Risk Services Group, Inc.

Ontario, CA
Santa Clarita, CA
Orange, CA
Oakland, CA
Rancho Cucamonga, CA
Santa Ana, CA
Rancho Cucamonga, CA

After a careful review of the proposals submitted, staff from the Human Resources/Risk Management Department interviewed the top three firms. Consideration was given to overall claims experience managing workers' compensation programs for clients and cities in California, experience of each staff member and examiner assigned to the City's account, educational programs for supervisors, competitive fees, and completeness and organization of their response to the proposal.

Based on the interviews conducted, AdminSure, Inc. was selected as the firm that would provide the best overall service, claims management, oversight to the City's workers compensation program and educational programs supervisors. They have an outstanding reputation for excellent customer service and have managed workers' compensation programs for 62 cities, including those with public safety departments.

The services that will be provided by AdminSure, Inc. include the monitoring of claims and disability status, setting and updating reserves, authorizing medical treatments, and processing medical bills. Additionally, they will ensure the City maintains compliance with workers' compensation law and the State of California Division of Workers' Compensation Appeals Board.

The proposed agreement with AdminSure, Inc. will run through June 30, 2022, and at such time it can be renewed for an additional four years, renegotiated, or re-bid.

CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ONTARIO AND THE ONTARIO POLICE MANAGEMENT GROUP AFFECTING TERMS AND CONDITIONS OF EMPLOYMENT DURING THE PERIOD OF JANUARY 1, 2018 TO JUNE 30, 2022; AND APPROVE THE RESOLUTION MODIFYING PAYMENT OF THE EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR EMPLOYEES IN POLICE SAFETY BARGAINING UNITS


RECOMMENDATION: That the City Council approve and authorize the City Manager to execute a four-year Memorandum of Understanding (on file in the Records Management Department) regarding wages, hours and other terms and conditions of employment between the City of Ontario and the Ontario Police Management Group (OPMG); and authorize the City Manager to make any non-substantive changes which may be necessary to implement the agreement; and adopt resolutions modifying the Employer Paid Member Contributions (EPMC) to the California Public Employees Retirement System (CalPERS) consistent with the terms and conditions of the police labor agreements and pursuant to California Government Code Section 20691.

COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy
Maintain the Current High Level of Public Safety
Operate In A Businesslike Manner

FISCAL IMPACT: The estimated additional annual recurring cost of the bargaining unit changes across all funds for each of the four years covered by the agreement is \$764,834 for year one, \$1,100,770 for year two, \$1,201,524 for year three and \$1,045,393 year four and going forward.

BACKGROUND: The current Memorandum of Understanding (MOU) between the City and OPMG expires in June 2018. Consistent with the current MOU, the parties reopened negotiations regarding salary increases for January 2018. During those negotiations, the parties reached a tentative agreement on a successor MOU, pending City Council approval. The proposed agreement includes a four-year MOU term from January 1, 2018 through June 30, 2022.

STAFF MEMBER PRESENTING: Angela Lopez, Director of Human Resources

Prepared by: Reed Sigler
Department: Human Resources
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

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The City and OPMG recognize the importance of maintaining the City's fiscally conservative approach while also attempting to provide a competitive compensation and benefit package to its employees. Containing future retirement costs while maintaining a competitive employee benefit package was a focal point in the negotiations with both parties. In 2012, the State of California passed the Public Employees Pension Reform Act of 2013, to address pension reform on a statewide basis. In a collaborative effort to continue to address the City's ongoing efforts related to pension reform, the City, and OPMG have agreed to increase the employee share of the employee's CalPERS pension contribution. Under the terms of the present MOU, employees identified as CalPERS "classic" employees contribute 6% of their pay on a pre-tax basis toward the cost of their pensions. The proposed MOU increases the percentage of the employees' contribution toward the cost of their retirement on a pre-tax basis as follows: 7% in January 2018, 8% in January 2019 and 9% in January 2020. CalPERS requires resolutions to implement the changes in the EPMC. In addition, to help ensure the City is able to recruit and retain a highly qualified workforce, employees represented by OPMG will receive general salary increases of 5% effective January 8, 2018; 5% in January 2019; 5% in January 2020; and 4% in January 2021.

Effective retroactively to January 2018, the City will increase the deferred compensation contribution by \$100 per month for employees represented by OPMG. Additional skills compensation modifications effective January 2018 include an increase by 2% to Motorcycle Duty and Air Support Duty Pay; and the addition of Airport Operations Bureau assignment.

Another key change is the establishment of an Internal Revenue Code Section 401(a) money purchase plan for the City's contributions toward deferred compensation.

The proposed MOU will provide the City of Ontario with economic certainty for budget forecasting in upcoming years while reflecting the positive partnership between the OPOA and the City.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE AND POLICE MANAGEMENT UNITS.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees of the Police and Fire Management Units.
- This benefit shall consist of paying 2% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be January 7, 2018.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

The City Clerk shall certify to the adoption of this Resolution

PASSED, APPROVED, AND ADOPTED this 3rd day of April 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 3, 2018, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held April 3, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE AND POLICE MANAGEMENT UNITS.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees of the Police and Police Management Units.
- This benefit shall consist of paying 1% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be January 6, 2019.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

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

PASSED, APPROVED, AND ADOPTED this 3rd day of April 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 3, 2018, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held April 3, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE AND POLICE MANAGEMENT UNITS.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees of the Police and Police Management Units.
- This benefit shall consist of paying 0% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be January 5, 2020.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

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

PASSED, APPROVED, AND ADOPTED this 3rd day of April 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 3, 2018, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held April 3, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: PURCHASE AND IMPLEMENTATION OF A NEW UTILITY BILLING SOFTWARE SOLUTION USING CIS INFINITY FROM ADVANCED UTILITY SYSTEMS

RECOMMENDATION: That the City Council authorize the City Manager to execute a multi-year agreement with Advanced Utility Systems, a subsidiary of Harris Computer Systems of Ottawa, Ontario, Canada for utility billing software, in the amount of \$2,861,813 and authorize a 25% project contingency of \$715,453 for a combined project total amount not to exceed \$3,577,266.


COUNCIL GOALS: Operate in a Businesslike Manner

FISCAL IMPACT: Software and project implementation costs are estimated to be \$3,577,266. Appropriations for the project implementation are included in the FY 2017-18 Adopted Budget.

The term of the agreement is 18 months. Ongoing annual software licensing is estimated to be \$199,933, which will be included in future years appropriations from the Information Technology Fund.

BACKGROUND: The City purchased and implemented PeopleSoft CIS software over 18 years ago. The PeopleSoft system has functioned well over time, but is antiquated and is no longer supported by Oracle. The CIS Infinity solution by Advanced Utility Systems provides an opportunity to bring the City into a state of the art solution. Internal functional and technical staff will administer the systems, install feature upgrades and bug-fixes, implementing periodic version upgrades and assist in any technical or interface issues. This is a major system upgrade addressing unique and complex processes and business practices citywide. As such, a 25% contingency is recommended. It is anticipated that the project could take up to 18 months to fully implement. The project will require Advanced Utility Systems professional services as well as a dedicated internal project team to transition successfully. The implementation also provides an opportunity for the City to evaluate its current practices and operations against industry leading best practices and make adjustments as appropriate. The City of Ontario strives to operate in a businesslike manner. The City will meet this goal through using Advanced Utility Systems, a highly regarded, publicly traded, industry leading solution.

STAFF MEMBER PRESENTING: Elliott Ellsworth, Information Technology Director

Prepared by: Peter Witherow
Department: Information Technology
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A CONSTRUCTION CONTRACT FOR THE QVC WAY STREET IMPROVEMENT PROJECT

RECOMMENDATION: That the City Council approve the plans and specifications and award a construction contract (on file with the Records Management Department) to Hillcrest Contracting, Inc. of Corona, California for the QVC Way Street Improvement Project (ST1718) in the bid amount of \$443,339 plus a 10% contingency of \$44,334 for a total authorized amount of \$487,673; and authorize the City Manager to execute said contract and related documents and file a Notice of Completion at the conclusion of the construction activities.

COUNCIL GOALS: 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)

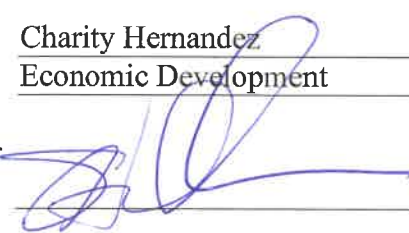
FISCAL IMPACT: The adopted FY 2017-18 Budget includes \$300,000 of appropriations for the construction of the QVC Way Improvement Project. If approved, an additional \$187,673 of appropriations will be included in the next Budget Update Report to be considered and approved by the City Council. A standard 10% contingency is recommended to cover possible unforeseen conditions during construction of the project.

BACKGROUND: The QVC Way Street Improvement Project completes QVC Way by constructing a cul-de-sac just south of Inland Empire Boulevard. The Project will provide additional access, improve vehicular circulation, and construct public improvements to support the existing and proposed auto dealerships within the Meredith Specific Planned Area.

The proposed public improvements include: construction of full width cul-de-sac improvements, asphalt pavement and asphalt overlay, curb, gutter, sidewalk, installation of street lights, water and storm drain improvement upgrades, and placement of traffic signage, striping and markings.

The City solicited bids for this project; and on February 27, 2018, three bids were received as summarized below:

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

Prepared by: Charity Hernandez
Department: Economic Development
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

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Bidder

Location

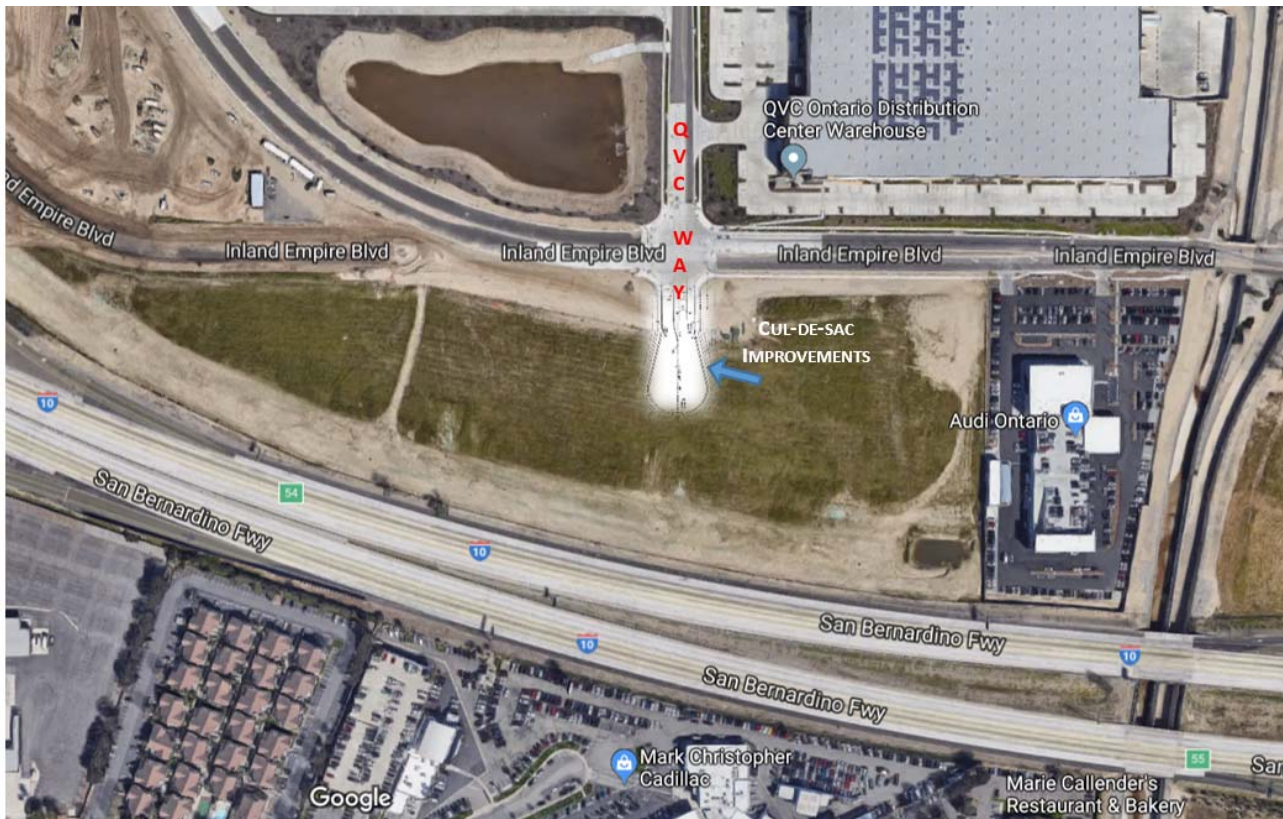
Amount

Hillcrest Contracting, Inc.
PALP, Inc. DBA: Excel Paving Company
Norstar Plumbing & Engineering, Inc.

Corona, CA
Long Beach, CA
Alta Loma, CA

\$443,339
\$497,794
\$513,142

Hillcrest Contracting, Inc. submitted the lowest responsive bid and has successfully completed numerous public works projects similar in scope and size.



CITY OF ONTARIO

Agenda Report

April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR FINANCIAL AUDIT SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute a three year professional services agreement (on file with the Records Management Department) with the accounting firm of Lance, Soll & Lunghard, LLP, of Brea, California, in the amount of \$296,360 to perform annual auditing services for the City of Ontario, the Ontario Housing Authority, and the Successor Agency of the former Redevelopment Agency; and authorize extension of the agreement for up to two additional years subject to City Council approved budgets.

COUNCIL GOALS: Operate in a Businesslike Manner

FISCAL IMPACT: The cost for the proposed financial audit agreement will be \$95,890 for the first year, and increase three percent for each of the next two years to \$98,760 and \$101,710, respectively. The audit costs for the two option years (Fiscal Years 2020-21 and 2021-22) will be \$104,740 and \$107,860, respectively.

BACKGROUND: In February 2018, the City solicited proposals for professional financial audit services from seven qualified certified public accountants to audit the City's financial statements for fiscal years ending June 30, 2018, 2019 and 2020, with options to renew for fiscal years ending June 30, 2021 and 2022. Below are the firms who submitted proposals and were interviewed:

Vendor

Eadie + Payne, LLP
Lance, Soll & Lunghard, LLP
White Nelson Diehl Evans LLP

Location

Riverside, CA
Brea, CA
Irvine, CA

The firms were evaluated on criteria that includes (1) scope of work – understanding of the service and purpose, responsiveness to the request for proposal, including approach and methodology, appropriate level of detail in proposal, relevance of add/delete to scope of work, familiarity with problems

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

Prepared by: Doreen M. Nunes
Department: Fiscal Services

City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018

Approved: _____

Continued to: _____

Denied: _____

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associated with the audit service, proposed fee relative to the services to be provided; (2) technical competence – technical/specialized qualifications of the team, experience of key personnel with similar audits, depth of technical expertise, provisions for technical and quality review, familiarity with the City’s structure and business; (3) past performance – technical quality of prior projects, demonstrated ability to meet schedules, cost control, performance on City or other public agency projects; (4) organization and schedule – the audit firm is independent and licensed to practice in California, firm has no conflict of interest with regard to any other work performed by the firm for the City of Ontario, commitment of key personnel, financial capability and resources of firm, flexibility to changes in scopes and schedules; and (4) cost.

It is recommended to continue financial audit services with Lance, Soll & Lunghard, LLP based on:

- Firm experience – over 89 years of audit experience with government agencies;
- Extensive expertise in successor agency reporting, Community Facility District (CFD) and special district audits;
- City clients – provides audit services for 60 cities;
- Staff qualifications – all partners and management staff are Certified Public Accountants. Partner currently serves a technical reviewer for the Government Finance Officers Association (GFOA) and the California Society of Municipal Finance Officers (CSMFO);
- High quality of past performance with the City;
- Familiarity with the City’s automated financial system; and
- Competitiveness in fees.

CITY OF ONTARIO

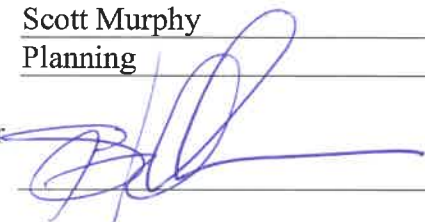
Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT AMENDMENT (SECOND AMENDMENT – FILE NO PDA05-001) BETWEEN THE CITY OF ONTARIO AND EDENGLLEN ONTARIO LLC, TO CLARIFY AND UPDATE THE TIMING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE, THE DEVELOPMENT IMPACT FEE PROVISIONS, AND THE EXTENSION OF THE TERM OF THE AGREEMENT TO SERVE TRACT MAP NO'S 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, AND 18791, GENERALLY LOCATED NORTH OF CHINO AVENUE, SOUTH OF RIVERSIDE DRIVE, EAST OF MILL CREEK AVENUE, AND WEST OF THE SCE UTILITY CORRIDOR, WITHIN PLANNING AREAS 1 THROUGH 8 OF THE EDENGLLEN SPECIFIC PLAN (APN: 0218-171-15; 0218-921-07, 08, 16, 19, 22, AND 30; 0218-931-01 THROUGH 25; 218-931-75 THROUGH 89; 0218-932-01 THROUGH 21; 0218-933-01 THROUGH 17; 0218-934-01 THROUGH 24; 0218-935-01- THROUGH 04; 0218-935-12 THROUGH 19; 0218-935-22 THROUGH 38; 0218-941-01 THROUGH 39; 0218-941-55 THROUGH 93; 0218-951-01 THROUGH 70; 0218-952-19 THROUGH 82; 0218-954-01 THROUGH 42; 0218-955-01 THROUGH 42; 0218-956-01 THROUGH 58; AND, 0218-961-07 THROUGH 88)

RECOMMENDATION: That the City Council consider and adopt an ordinance approving the Second Amendment, File PDA05-001, (on file with the Records Management Department) to the Development Agreement between the City of Ontario and Edenglen Ontario LLC, a Delaware Limited Liability Company, to clarify and update the phasing of the construction of public infrastructure to serve Tract Map No's 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, and 18791 and extend the term of the Development Agreement.

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

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

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

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COUNCIL GOALS: 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 Ontario Ranch

FISCAL IMPACT: The proposed Development Agreement Amendment will update the phasing of the construction of public infrastructure to serve Tract Map No's 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, and 18791. 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 Ontario Ranch development. The Development Agreement and the related tract map(s) conditions require the developer to construct public infrastructure.

BACKGROUND: On March 20, 2018, the City Council introduced and waived further reading of an ordinance approving the Development Agreement Amendment. In October 2005, the City Council approved the Edenglen Specific Plan and the Environmental Impact Report (EIR). The Specific Plan established the land use designations, development standards, and design guidelines for approximately 159 gross acres of land, which included the potential development of 584 single-family units 217,520 square feet of commercial space, and 550,000 square feet of business park/light industrial space. Subsequently, the City Council approved a Development Agreement, File No. PDA05-001, between the City of Ontario and Brookfield Edenglen, LLC to develop to 61.1 acres of land within Planning Areas 1 through 8, the residential component, of the Edenglen Specific Plan. Since that initial Development Agreement approval, several agreements and one amendment have been approved by the City to provide the Applicant flexibility in constructing the Edenglen Community during the recession.

The Applicant is now requesting a Second Amendment to the original Development Agreement and extend the term of the Development Agreement and to clarify and update the phasing of the construction of public infrastructure to serve Tract Map No's 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, and 18791. Key points of the Second Amendment are as follows:

1. The term of the Development Agreement will be extended for an additional five (5) year period.
2. The DIF Credit and Reimbursement provisions in the existing Development Agreement will be restated and replaced by a separate DIF Credit and Reimbursement Agreement.
3. The Second Development Agreement Amendment will require that the remaining street improvements on Mill Creek Avenue and Chino Avenue immediately adjacent to the Edenglen Project are to be completed within a reasonable period of time.
4. Except for the amount to be retained in the escrow account under number 3 above, the remaining funds in the escrow account established for the funding of the Mill Creek Avenue and Chino Avenue improvements will be distributed back to Edenglen Ontario upon completion and execution of the proposed Second Development Agreement Amendment.
5. The City will not issue any DIF Credit for the improvements constructed by Brookfield for improvements in Mill Creek and Chino Avenues in the Storm Drain and Sewer DIF categories until the improvements are completed and connected to permanent master-planned sewer and storm drain systems.

6. Prior to requesting building permits for any units beyond a total of four hundred eighty-five (485) units, Brookfield will complete the design and construction of permanent master planned sewer and storm drain improvements in Mill Creek Avenue to serve the Edenglen Project.
7. If prior to Brookfield requesting building permits for any units beyond a total of four hundred eighty-five (485) units, the City determines that master planned sewer improvements are available in Mill Creek Avenue at or near the intersection of Mill Creek Avenue and Ontario Ranch Road, then City will notify Brookfield of such available connections. Within ninety (90) days following such notice, Brookfield will initiate the design and construction of permanent master planned sewer improvements from the Edenglen Project to a point of connection located at the intersection of Mill Creek Avenue and Ontario Ranch Road.
8. If prior to Brookfield requesting building permits for any units beyond a total of four hundred eighty-five (485) units, the City determines that master planned storm drain improvements are available in Mill Creek Avenue at or near the intersection of Mill Creek Avenue and Ontario Ranch Road, then City will notify Brookfield of such available connections and Brookfield will initiate the design and construction of permanent master planned storm drain improvements from the Edenglen Project to a point of connection located at the intersection of Mill Creek Avenue and Ontario Ranch Road.
9. The City may require Brookfield to provide new or restated bonds to ensure the construction of the Mill Creek Avenue sewer and storm drain improvements in accordance with the provisions of the proposed Second Amendment and this letter.
10. If Brookfield does not initiate the design and construction, and/or does not complete the design and construction, of either the sewer and storm drain improvements in Mill Creek Avenue within the eighteen (18) month period, Brookfield will concur with, and cooperate with, all City actions to compel the surety company that has issued the completion bonds for the sewer and storm drain improvements to initiate and/or complete the construction of the sewer and storm drain improvements. Additionally, Brookfield agrees that the current bonds issued by the surety company will be retained and maintained by Brookfield until the completion of the sewer and storm drain improvements by Brookfield or the surety company.
11. The City will design and construct the extension of the Recycled Water line in Riverside Drive to a point adjacent to the Edenglen Project. Once the City has completed the construction of the extension of the Recycled Water line in Riverside Drive, Brookfield will connect the recycled water system within the Edenglen Project to the permanent master planned Recycled Water line in Riverside Drive and abandon further use of the agricultural water provided under the Well Use Agreement.
12. Upon completion and execution of a Second Amendment to the Development Agreement and the DIF Credit and Reimbursement Agreement, the City will issue reimbursements from DIF fees previously paid and not refunded when sufficient DIF Credit is provided to the City and in compliance with the separate DIF Credit and Reimbursement Agreement and City policies.

13. The completion of the neighborhood edge landscaping behind sidewalk along Chino Avenue, from Mill Creek Avenue to Edenglen Avenue may be deferred until Brookfield files an application for modification of the Tract Map for Tract 17392 to retain the utility power lines along the north side of Chino Ave or until Brookfield relocates the utility poles and underground the distribution facilities.
14. Brookfield will continue to reimburse the City for all maintenance requirements and retain the performance bond for Sewer pump station until the Project is connected to permanent master planned sewer facilities in Mill Creek Avenue.

The main points of the original agreement addressing Development Impact Fees (DIF); public service funding; Community Facilities District (CFD) for maintenance of public facilities; park/open space requirements; affordable housing fees; and, school facilities requirements remain in force.

In considering the application at their meeting of February 27, 2018, the Planning Commission found that the Second Amendment to the Development Agreement was consistent with State law; The Ontario Plan; the City's Development Agreement policies; and other Development Agreements previously approved for Ontario Ranch developments; and, with a 5 to 0 vote (Resolution No. PC18-023), recommended approval of the Second Amendment to the Development Agreement to the City Council.

Edenglen Ontario, LLC, is under the control of Brookfield Residential Properties.

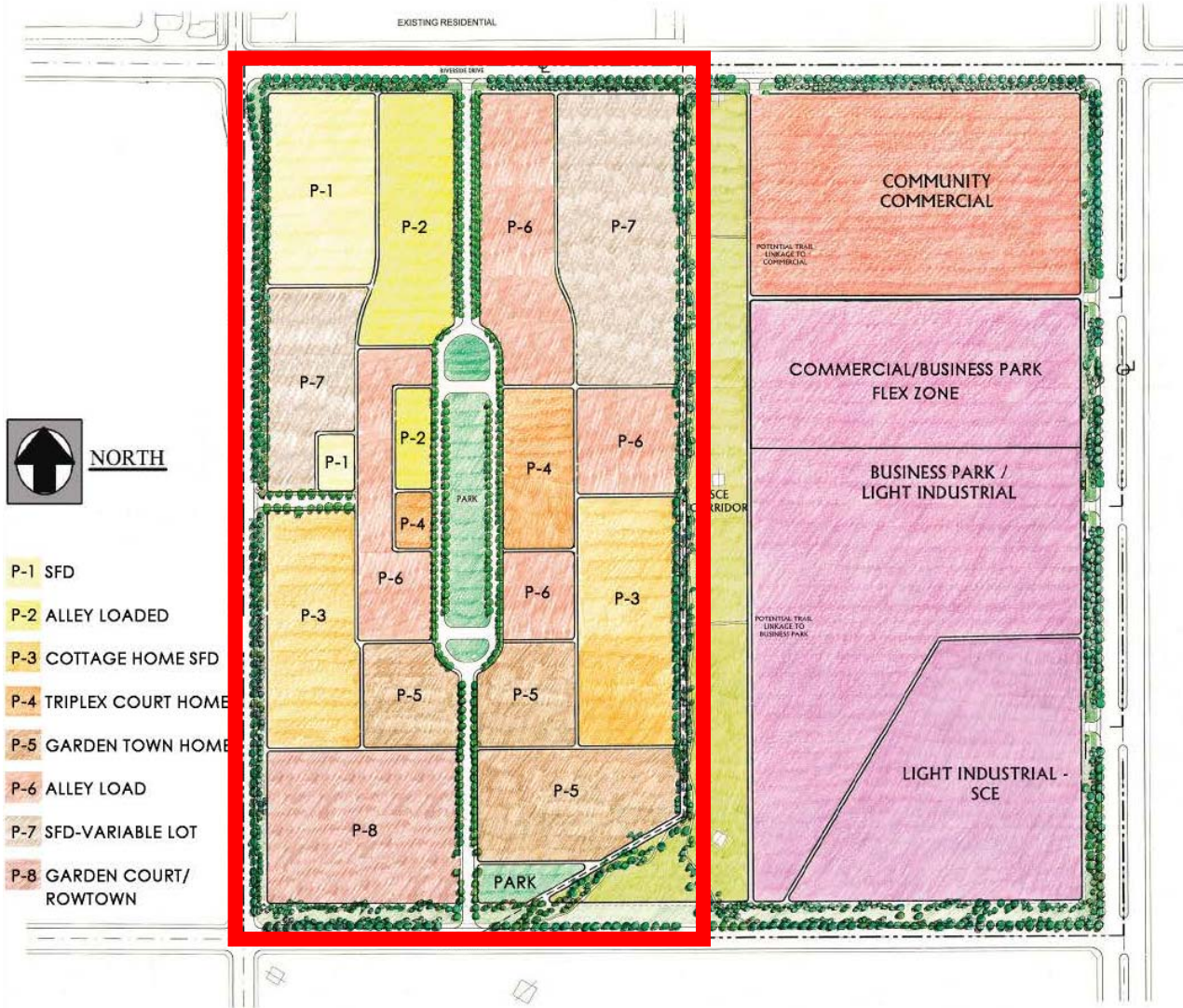
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units and density specified within the Edenglen Specific Plan. Per the Available Land Inventory, the Edenglen Specific Plan is required to provide 584 dwelling units.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The project site is located within the Airport Influence Area of the Ontario International Airport (ONT), and has been found to be consistent with the policies and criteria set forth within the ALUCP for ONT.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Edenglen Specific Plan EIR (SCH# 2004051108) that was adopted by the City Council on October 4, 2005. This project introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"

Edenglen Specific Plan Land Use Plan



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT, FILE NO. PDA05-001, BETWEEN THE CITY OF ONTARIO AND EDENGLLEN ONTARIO, LLC, TO CLARIFY AND UPDATE THE TIMING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE, THE DEVELOPMENT IMPACT FEE PROVISIONS, AND THE EXTENSION OF THE TERM OF THE AGREEMENT TO SERVE TRACT MAP NO'S 17392, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, 18791, AND 17564, GENERALLY LOCATED NORTH OF CHINO AVENUE, SOUTH OF RIVERSIDE DRIVE, EAST OF MILL CREEK AVENUE, AND WEST OF THE SCE UTILITY CORRIDOR, WITHIN PLANNING AREAS 1 THROUGH 8 OF THE EDENGLLEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-171-15; 0218-921-07, 08, 16, 19, 22, AND 30; 0218-931-01 THROUGH 25; 0218-931-75 THROUGH 89; 0218-932-01 THROUGH 21; 0218-933-01 THROUGH 17; 0218-934-01 THROUGH 24; 0218-935-01 THROUGH 04; 0218-935-12 THROUGH 19; 0218-935-22 THROUGH 38; 0218-941-01 THROUGH 39; 0218-941-55 THROUGH 93; 0218-951-01 THROUGH 70; 0218-952-19 THROUGH 82; 0218-954-01 THROUGH 42; 0218-955-01 THROUGH 42; 0218-956-01 THROUGH 58; 0218-961-07 THROUGH 88.

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

WHEREAS, on September 10, 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, on November 15, 2005, the City Council of the City of Ontario, adopted Ordinance No. 2820, approving a Development Agreement between Brookfield Edenglen, LLC and the City; and

WHEREAS, the CITY and OWNER have previously supplemented the Development Agreement pursuant to: the Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, (hereinafter the “First Supplemental Memorandum”) dated February 20, 2007; the Second Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, (hereinafter the “Second Supplemental Memorandum”) dated November 14, 2007; the Third Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, (hereinafter the “Third Supplemental Memorandum”) dated January 17th, 2008; the Amended and Restated Fourth Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, dated, June 7, 2010 and the First Amendment to the Development Agreement by and between the City of Ontario and Edenglen Ontario LLC, dated January 1, 2011 (collectively, the Development Agreement); and

WHEREAS, OWNER and CITY also previously entered into the “Agreement For Temporary Water Service From and Abandonment of Agricultural Well, dated September 27, 2006 (hereinafter, the “Well Use Agreement”); and

WHEREAS, attached to this Ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Second Amendment to the Development Agreement between Edenglen Ontario, LLC, and the City of Ontario, File No. PDA05-001. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Edenglen Specific Plan EIR (SCH# 2004051108) that was adopted by the City Council on October 4, 2005. This project 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 February 27, 2018, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date. After considering all public testimony, the Planning Commission voted 5 to 0 to adopt their Resolution No. PC18-023, recommending approval of the Development Agreement Amendment to the City Council; and

WHEREAS, On March 20, 2018, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

NOW, THEREFORE, it is hereby found, determined, and ordained by the City Council of the City of Ontario as follows:

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously adopted Edenglen Specific Plan EIR (SCH# 2004051108) that was adopted by the City Council on October 4, 2005, and supporting documentation. Based upon the facts and information contained in the addendum to the Edenglen Specific Plan EIR (SCH# 2004051108) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the previously adopted addendum to the Edenglen Specific Plan EIR (SCH# 2004051108) that was adopted by the City Council on October 4, 2005. This application introduces no new significant environmental impacts; and

(2) The Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts.

(4) All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference.

(5) The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(6) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

SECTION 2. Subsequent or Supplemental Environmental Review Not Required. Based on the Addendum, all related information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Environmental Impact Report is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Certified EIR was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3. Housing Element Consistency. Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units and density specified within the Edenglen Specific Plan. Per the Available Land Inventory, the Edenglen Specific Plan is required to provide 584 dwelling units.

SECTION 4. Ontario International Airport Land Use Compatibility Plan (“ALUCP”) Compliance. The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan (“ALUCP”), establishing the Airport Influence Area for Ontario International Airport (“ONT”), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. Concluding Facts and Reasons. Based upon substantial evidence presented to the City Council during the above-referenced hearing on March 20, 2018, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to approximately 61.1 acres of land generally located north of Chino Avenue, south of Riverside Drive, east of Mill Creek Avenue, and west of the SCE utility corridor, within Planning Areas 1 through 8, of the Edenglen Specific Plan), and is presently improved with residential development and residential construction is on-going; and

b. The properties to the north of the Project site are within the Creekside Specific Plan, are developed with open space and residential uses. The property to the south of the project site is developed with a SCE substation. The properties to the east are within the Edenglen Specific Plan, are designated for Utility Corridor, Commercial, Business Park, and Industrial uses and are vacant and developed with a landscape nursery. The property to the west is developed with a high school; and

c. This Development Agreement will provide for the continued orderly development of the Edenglen Specific Plan; and

d. 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. The environmental impacts of this project were previously adopted Edenglen Specific Plan EIR (SCH# 2004051108) that was adopted by the City Council on October 4, 2005, and supporting documentation. This application introduces no new significant environmental impacts; and

e. All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

SECTION 6. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the Second Amendment to the Development Agreement, File No. PDA05-001, attached hereto as “Exhibit A,” and incorporated herein by this reference.

SECTION 7. ***Indemnification.*** 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 8. ***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 9. ***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 10. ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 11. ***Publication and Posting.*** 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 15 days following 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 3rd day of April 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3094 was duly introduced at a regular meeting of the City Council of the City of Ontario held March 20, 2018 and adopted at the regular meeting held April 3, 2018 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3094 duly passed and adopted by the Ontario City Council at their regular meeting held April 3, 2018 and that Summaries of the Ordinance were published on March 27, 2018 and April 10, 2018 in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A:

Development Agreement Amendment

(Development Agreement Amendment to follow this page)

**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

SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

And

EDENGLLEN ONTARIO LLC, a Delaware limited liability company,

_____, 2018

San Bernardino County, California

**SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND EDENGLLEN ONTARIO LLC**

This Second Amendment (hereinafter "Second Amendment") is entered into effective as of the ____ day of _____ 2018 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Edenglen Ontario LLC, a Delaware limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement"); and

WHEREAS, the CITY and OWNER have previously supplemented the Development Agreement pursuant to: the Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, (hereinafter the "First Supplemental Memorandum") dated February 20, 2007; the Second Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, (hereinafter the "Second Supplemental Memorandum") dated November 14, 2007; the Third Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, (hereinafter the "Third Supplemental Memorandum") dated January 17th, 2008; the Amended and Restated Fourth Supplemental Memorandum of Agreement By and Between the City of Ontario and Edenglen Ontario LLC, dated, June 7, 2010 and the First Amendment to the Development Agreement by and between the City of Ontario and Edenglen Ontario LLC, dated January 1, 2011 (collectively, the Development Agreement); and

WHEREAS, OWNER and CITY also previously entered into the "Agreement For Temporary Water Service From and Abandonment of Agricultural Well, dated September 27, 2006 (hereinafter, the "Well Use Agreement"); and

WHEREAS, the Development Plan and Development Approvals as defined in the Development Agreement included all permits and other entitlements for use subject to approval or issuance by CITY, including the Subdivision Agreement for Final Tract Map No. 17392, known as the "A map", (hereinafter referred to as the "Subdivision Agreement") that, among other things, required the dedication of Rights of Way and the construction of public improvements; and

WHEREAS, the Development Plan and Development Approvals as defined in the Development Agreement also includes all permits and other entitlements for use subject to the approval or issuance by CITY, including the Subdivision Agreements for Final Tract Map Nos. 17558, 17559, 17560, 17561, 17562, 17563, 17564, 18789, 18790, 18791, and 17564; that among other things, required the construction of public improvements; and

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

WHEREAS, OWNER has previously requested to modify the number of residential units that may utilize the existing temporary connection to CITY's sewer infrastructure and OWNER has acknowledged that by agreeing to expand the use of the existing temporary connection to CITY's sewer infrastructure, OWNER and CITY have reduced the capacity in CITY's sewer facilities such that other adjacent property owners may be unable to develop authorized uses on their property. In recognition of this, OWNER has previously agreed to construct improvements to the CITY's sewer facilities to expand the capacity of such facilities, if and when, the owners of the adjacent properties proceed with the development and connection to CITY's sewer infrastructure. Additionally, OWNER has previously agreed to provide sufficient security in the form of an acceptable Performance Bond or other acceptable security to ensure the construction of expanded sewer facilities, when CITY determines that such facilities are required, in the CITY's sole and absolute discretion; and

WHEREAS, it is recognized by OWNER and CITY that the availability of permanent sewer services and storm drain infrastructure to serve the Property may not be constructed without the future participation of other developable property owned by OWNER and others that will be served by the same infrastructure; and

WHEREAS, the Development Agreement between the City and OWNER, reflects the assumption that the consortium of developers, organized as NMC Builders LLC would jointly-fund and construct certain master planned infrastructure improvements, including the extension of recycled water facilities; sewer facilities and storm drain facilities to serve the Property. Since the approval of the Development Agreement between the City and the OWNER, the scope of the improvements to be constructed by NMC Builders LLC has been significantly reduced and will not be constructing these master planned infrastructure improvements to provide for the extension of recycled water, sewer or storm drain facilities to the Project; and

WHEREAS, the City of Ontario and NMC Builders LLC have previously entered into the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve the Easterly Portion of the New Model Colony in August 2012 (the "Construction Agreement Amendment") and such Construction Agreement Amendment no longer requires NMC Builders LLC to construct public improvements to serve the Project; and

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch; and

WHEREAS, the CITY and OWNER have previously agreed to the use of interim facilities for storm drain and sewer utilities for the Project; and

WHEREAS, the CITY has previously agreed to allow the interim use of water from an agricultural well in-lieu of requiring the extension of master planned recycled water facilities to serve the Project; and

WHEREAS, the term of the Development Agreement was for a 10-year period and OWNER requested to extend the term of the Development Agreement for an additional 5-year period pursuant to Section 2 of the Development Agreement; and

WHEREAS, the CITY granted a temporary extension of the original term to allow the CITY and OWNER to negotiate the terms of this Second Amendment and to determine that OWNER was in compliance with the Development Agreement;

WHEREAS, upon approval and recordation of this Second Amendment, OWNER will be determined by CITY to be in compliance with the terms of the Development Agreement and CITY shall approve the extension of the term of the Development Agreement for an additional 5-year period;

WHEREAS, the CITY and OWNER agree that execution of this Second Amendment shall constitute Certification of Agreement Compliance under Section 6.4 of the Development Agreement and City shall issue "Certificate of Agreement Compliance" within 10 days following the effective date of this Second Amendment.

AGREEMENTS

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

1. Modification of OWNER's Responsibility for Construction of Master Planned Sewer Facilities to Serve the Property. OWNER and CITY agree that the Section 1, including all subsections a. through i. of the First Amendment to the Development Agreement shall be replaced and superseded by the following:

1.1 OWNER agrees that within ninety (90) days of receiving written notice from CITY that master planned sewer facilities are available at or near the intersection of Ontario Ranch Road and Mill Creek Avenue, OWNER shall initiate the design and construction of permanent master planned sewer improvements from the Edenglen Project to a point of connection located at the intersection of Mill Creek Avenue and Ontario Ranch Road. OWNER agrees that OWNER shall diligently pursue and complete the construction of the permanent master planned sewer improvements to serve the Project within eighteen (18) months after notification from CITY. CITY agrees that this eighteen-month (18) period may be extended at the sole discretion of the City Engineer if OWNER requests an extension due to construction delays. The master planned sewer facilities to be constructed by

OWNER shall be as described in Exhibit F-A, attached hereto and incorporated herein.

- 1.2 OWNER also agrees that regardless of whether master planned sewer facilities are available at, or near, the intersection Ontario Ranch Road and Mill Creek Avenue, OWNER shall design and complete the construction of master planned sewer facilities in the Sewer Master Plan to serve the Property, including the extension of the master planned sewer facilities in Mill Creek Avenue, prior to, and as a condition precedent to OWNER requesting a building permit for the four hundred eighty fifth (485th) residential unit for the Property. Until such time as OWNER has completed the master planned sewer facilities to serve the Property, OWNER shall continue to be responsible for all costs for maintaining and operating the existing temporary sewer facilities including, but not limited to, all utilities and power costs, and the costs of on-going maintenance and repairs and connections to CITY's telemetry monitoring system. The master planned sewer facilities to be constructed by OWNER shall be as described in Exhibit F-B.
- 1.3 OWNER shall retain in full force and effect the Performance Bonds and Labor and Materials Bonds ("Bonds") to ensure that OWNER shall continue to be responsible to operate and maintain OWNER's sewer pumping facilities until permanent sewer facilities are completed and accepted by the CITY. If OWNER does not initiate the design and construction, or does not complete the design and construction, of the master planned sewer facilities in Mill Creek Avenue to serve the Project within the eighteen (18) month period as described in Section 1.1, OWNER concurs with, and OWNER shall cooperate with, all actions by CITY to compel the surety company that has issued the completion bonds for the sewer to initiate and/or complete the construction, as necessary, of the master planned sewer facilities as described in Exhibit F-A. Additionally, if OWNER fails to perform OWNER's responsibilities for the operation and maintenance of the sewer pumping facilities, as required by CITY, OWNER agrees that CITY shall proceed to call, and require performance by, the issuer of the Bonds.
- 1.4 CITY agrees that if a portion of the master planned sewer facilities as described in Exhibit F, are constructed by OWNER or others, OWNER may provide alternate security in the form of a new Bonds for the estimated remaining design and construction costs, as determined by the City Engineer, for the permanent master planned sewer facilities as described in Exhibit F-B and the estimated costs for the proper abandonment and removal of the temporary sewer facilities, in-lieu of the current Bonds for the construction of the previous master planned sewer facilities to serve the Property. If OWNER does not proceed with the construction and completion of the required master planned sewer improvements as described in Section 1.1 and Exhibit F-A or, alternatively Section 1.2 and Exhibit F-B, OWNER shall have breached this Second Amendment and CITY and OWNER agree that CITY shall proceed to call, and require performance by, the issuer of the Bonds.

2. Modification of OWNER's Responsibility for the Construction of Permanent Storm Drain Facilities to Serve the Property. CITY and OWNER agree that Section 2, including subsections a and b shall be replaced and superseded by the following:

"a. OWNER agrees that within ninety (90) days of receiving notice from CITY that permanent master planned storm drain facilities are available at, or near, the intersection of Ontario Ranch Road and Mill Creek Avenue OWNER agrees that OWNER shall diligently pursue and complete the construction of the permanent master planned storm drain improvements to serve the Project in Mill Creek Avenue from the Project to the connection to constructed storm drain improvements in Mill Creek Avenue and Ontario Ranch Road, within eighteen (18) months after notification from CITY. CITY agrees that this eighteen-month (18) period may be extended at the sole discretion of the City Engineer, if OWNER requests an extension due to construction delays. The master planned storm drain improvements to be constructed by OWNER shall be as described in Exhibit F-A, attached hereto and incorporated herein.

b. OWNER also agrees that regardless of whether master planned storm drain facilities are available at, or near, the intersection Ontario Ranch Road and Mill Creek Avenue, OWNER shall design and complete the construction of master planned storm drain improvements to serve the Property, including the extension of the master planned storm drain improvements in Mill Creek Avenue from the Project to a connection to the Countyline Channel, prior to, and as a condition precedent to OWNER requesting a building permit for the four hundred eighty fifth (485th) residential unit for the Property. Until such time as OWNER has completed the master planned storm drain facilities to serve the Property, OWNER shall continue to be responsible for all costs for maintaining and operating the existing temporary storm drain basin facilities including, but not limited to, the costs of any and all maintenance and repairs. The master planned storm drain improvements to be constructed by OWNER shall be as described in Exhibit F-B.

c. OWNER shall retain in full force and effect the Performance Bonds and Labor and Materials Bonds ("Bonds") to ensure that OWNER designs, constructs and completes the storm drain improvements in Mill Creek Avenue. If OWNER does not initiate the design and construction, or does not complete the design and construction, of the master planned sewer facilities in Mill Creek Avenue to serve the Project within the eighteen (18) month period as described in Section 2.1, OWNER concurs with, and OWNER shall cooperate with, all actions by CITY to compel the surety company that has issued the completion bonds for the storm drain improvements to initiate and/or complete the construction, as necessary, of the master planned storm drain improvements as described in Exhibit F-A. OWNER shall continue in full force and effect, the Performance Bond and Labor and Materials Bond ("Bonds") to ensure that OWNER shall continue to be fully responsible for the maintenance of OWNER's interim storm drain basin facilities until permanent storm drain facilities are completed.

d. CITY agrees that if a portion of the master planned storm drain improvements as described in Exhibit F-B, are constructed by OWNER or others, OWNER may provide alternate security in the form of a new Bonds for the estimated remaining design and construction costs, as determined by the City Engineer, for the permanent master planned sewer facilities as described in Exhibit F-B and the estimated costs for the proper abandonment and removal of the temporary storm drain basin facilities, in-lieu of the current Bonds for the construction of the previous master planned storm drain improvements to serve the Property. If OWNER does not proceed with the construction and completion of the required master planned storm drain improvements as described in Section 2.1 and Exhibit F-A or, alternatively Section 2.2 and Exhibit F-B, OWNER shall have breached this Second Amendment and CITY and OWNER agree that CITY shall proceed to call, and require performance by, the issuer of the Bonds.

3. Modifications to the Development Agreement and First Amendment regarding Development Impact Fees.

3.1 Modifications to of Section 4.2 of the Development Agreement regarding Development Impact Fees. CITY and OWNER agree to modify Section 4.2 of the Development as follows:

“a. Subsections 4.2.1.and 4.2.2 of the Development Agreement shall be replaced by the following Subsections 4.2.1 and 4.2.2:

“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.”

b. Subsection 4.2.3 shall be retained and shall continue to be in full force and effect.

c. Subsections 4.2.4 and Subsections 4.2.5 shall be removed and replaced with the following Subsections 4.2.4 and 4.2.5:

“4.2.4 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY’s Development Impact Fee Program and the Construction Agreement 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.

“4.2.5 Construction of DIF Program Infrastructure (Non-Construction Agreement). To date, OWNER has constructed and completed, and CITY has accepted public improvements that are in CITY’s Development Impact Fee Program. CITY has issued to OWNER credits against OWNER’s DIF Obligations and OWNER has previously used such credits against OWNER’s DIF Obligations in the amounts and in the DIF Program categories as shown in the attached Exhibit 1, attached hereto and incorporated herein. OWNER agrees that CITY has issued all DIF Credit due to OWNER from OWNER’s previously completed and accepted DIF Program public improvements To the extent OWNER is required to construct and completes construction of additional public improvements that are included in CITY’s Development Impact Fee Program and such public improvements are not included the Construction Agreement Amendment between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Development Impact Fee Credit Agreement for Facility Construction (“DIF Credit Agreement”) between CITY and OWNER. Any and all limitations on the use of DIF Credit currently held by OWNER or issued to OWNER to offset OWNER’s DIF payment obligations shall also be subject to the provisions of a separate DIF Credit Agreement. CITY and OWNER agree that the DIF Credit Agreement between CITY and OWNER shall comply with CITY’s adopted policies applicable to such agreements. Notwithstanding the above, CITY shall not issue any DIF Credit to OWNER for the improvements constructed by OWNER in Mill Creek and Chino Avenues in the Storm Drain and Sewer DIF Local Adjacent DIF categories until the improvements are completed and connected to permanent master-planned sewer and storm drain systems.”

3.2 CITY’s Use of OWNER’s Refunded Development Impact Fees for the Construction of Permanent Master Planned Recycled Water Facilities to Serve the Property. The CITY and OWNER also agree to add the Subsection 4.2.6 to the Development Agreement as follows:

“4.2.6 CITY and OWNER agree that OWNER has previously paid to CITY, Development Impact Fees (DIF) in the Water DIF Category and it is anticipated that OWNER shall complete and CITY shall accept DIF Program Improvements in the Local Adjacent Water DIF category. CITY and OWNER agree that CITY and OWNER shall enter into a separate DIF Credit and Reimbursement Agreement as

referenced in Section 4.2.5. Subject to the provisions of such separate DIF Credit and Reimbursement Agreement, it is contemplated that OWNER's completed DIF Program Improvements in the Local Adjacent Water category will be eligible for DIF Credit from the City in the Local Adjacent Water category. Upon completion of such recycled water improvements by CITY, OWNER shall connect the recycled water system within the Edenglen Project to the permanent master planned Recycled Water line in Riverside Drive and abandon further use of the agricultural water provided under the Well Use Agreement between the City and OWNER. In recognition of the costs to the CITY for the design and construction of the extension of the Recycled Water improvements in Riverside Drive from Haven Avenue to a point adjacent to the Project, and as shown on the attached Exhibit F-B. OWNER's reimbursement for DIF Credit shall be reduced by an amount equal to the actual CITY costs for design and construction of the extension of the recycled water improvements up to a maximum reduction of four hundred thousand dollars \$400,000. The determination of the CITY's actual costs for the design and construction of the recycled water improvements in Riverside Drive will be included within the DIF Credit and Reimbursement Agreement and will be generally in conformance with the provisions of Section 1.5 of the Construction Agreement Amendment. OWNER shall also continue to maintain the existing recycled water system with the existing connection to the agricultural well until such time as the master planned recycled water facilities are available and OWNER has completed the construction of the connection to the master planned recycled water facilities in Riverside Avenue."

5. Disposition of Remaining Deposits in the Escrow Account for the Construction of Improvements. CITY and OWNER agree that Sections 3, 4 and 5 of the First Amendment to the Development Agreement are no longer applicable and shall be replaced and superseded by the following:

"a. Within thirty (30) days following the effective date of this Second Amendment, OWNER shall initiate construction to remediate the street improvements on Mill Creek Avenue and Chino Avenue immediately adjacent to the Project. Such remediation of the street improvement is to be completed by OWNER within a period of one hundred (180) days, including all reconstruction required to cure the pavement deficiencies of these street improvements. Once these street improvements are completed and accepted CITY shall issue DIF Credit to OWNER in the Local Adjacent Streets Category under the provisions of a DIF Credit and Reimbursement Agreement.

b. The remaining funds in the Escrow Account, which are \$602,928.51 as of January 16, 2018, established for the funding of the Mill Creek Avenue and Chino Avenue improvements will be retained within the Escrow Account and used exclusively for the OWNER's costs of reconstruction of the Mill Creek and Chino Avenue street improvements. Upon completion and acceptance of the Mill Creek and Chino Avenue street improvements by CITY, any remaining funds in Escrow Account shall be returned to OWNER. If OWNER's costs for the reconstruction of the Mill Creek and Chino Avenue street improvements exceed amount of remaining funds in the Escrow Account OWNER shall, at OWNER's option, either make additional deposits to the Escrow Account or fund

the costs for the reconstruction of the street improvements directly by OWNER outside of the Escrow Account. In either case, OWNER shall be responsible for the full costs for the reconstruction of the Mill Creek and Chino Avenue street improvements regardless of the availability of funds in the Escrow Account.

6. Restoration of Requirements within the Development Approvals – Subdivision Agreement – Final Tract Number 17392. OWNER agrees that Section 11 of the First Amendment to the Development Agreement is removed and replaced by the following:

“The requirements of the Subdivision Agreement for Final Tract Number 17392 are hereby modified as follows:

a. OWNER’s obligation to construct the extension of permanent sewer facilities from the Property to master planned sewer facilities as described in either Exhibit F-A or F-B to connect the Project to master planned sewer facilities shall be subject to the provisions of this Second Amendment.

b. OWNER’s obligation to construct the extension of permanent storm drain facilities from the Property to the County line Channel as describe in either Exhibit F-A or F-B to connect the Project to master planned storm drain facilities shall be subject to the provisions of this Second Amendment.

c. OWNER’s obligation to construct recycled water facilities to connect the Property to a permanent recycled water source in Riverside Drive shall be subject to the provisions of this Second Amendment.”

7. OWNER’s Continuing Obligations to Complete the Construction of the Neighborhood Edge Landscaping Behind the Sidewalk along Chino Avenue.

CITY and OWNER agree the completion of the construction of the neighborhood edge landscaping behind sidewalk along Chino Avenue, from Mill Creek Avenue to Edenglen Avenue may be deferred until OWNER files an application for modification of the Tract Map for Tract 17392 to retain the utility power lines along the north side of Chino Ave in their current location for both the transmission and distribution lines and revert the impacted developable lots to an expanded trail corridor within the existing SCE easement area or until OWNER relocates the utility poles and relocates the distribution facilities underground. OWNER shall will either file an application for a modification of Tract Map for Tract 17392 or initiate relocation of the utility poles and the undergrounding of the distribution facilities within one-hundred (180) days after the effective date of this Second Amendment.

8. OWNER’s Construction of Improvements. OWNER shall continue to follow CITY-approved bidding requirements, select a licensed contractor (approved by CITY in its reasonable discretion), and cause the construction of the required infrastructure all as detailed in the specifications to be provided by OWNER and approved by CITY. The construction of Improvements shall, without limitation, include the requirement that prevailing wages be paid as set forth herein and further described in the separate DIF Credit and Reimbursement Agreement. OWNER shall coordinate with CITY during the

bid and award process, and shall, prior to awarding the bid, provide to the CITY the submitted bids and the proposed contract.

9. Modification of OWNER's Other Requirements. CITY and OWNER agree that OWNER's Other Requirements as described in the Section 6 of the First Amendment and Exhibits 1-A and 1-B of the First Amendment have been completed or substantially completed by OWNER. The design and construction of the remaining infrastructure requirements for the Property are as described in Sections 1 and 2 herein and within the Subdivision Agreement for Final Tract Number 17392, as amended by the previous First Amendment and this Second Amendment.

10. Failure to Complete Any Remaining Required Improvements If OWNER fails to complete construction of any of the Improvements as described in Sections 1, 2, 5 and 7 or any of the remaining Improvements required by the Subdivision Agreement for Final Tract Number 17392, OWNER shall be deemed in default of the Development Agreement thereby entitling CITY to any and all remedies available, including, without limitation, any or all of the following:

- a. CITY shall have the right to decline to honor OWNER's use of DIF Credit(s) related to the affected improvements without liability;
- b. CITY may withhold any unissued OWNER's Project-related building permits, certificates of occupancy, or any other discretionary or ministerial approvals, without liability; and,
- c. CITY may terminate or modify the Development Agreement.

11. Extension of Term of Development Agreement. CITY and OWNER acknowledge that the term of the Development Agreement was for a period of ten (10) years from the effective date of the Development Agreement. CITY and OWNER also acknowledge that Section 2.3 of the Development Agreement provides that the term of the Development Agreement may be extended for an additional five (5) year period under certain conditions. CITY and OWNER agree that the required conditions have been met and CITY hereby grants an extension of the term of the Development Agreement for an additional five (5) year period. Such additional five (5) year period shall begin upon the date that this Second Amendment is effective.

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

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

14. Integration. This Second Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this Second Amendment conflicts with the Development Agreement, First Amendment, First Supplemental Memorandum, Second Supplemental Memorandum, Third Supplemental Memorandum, or Amended and Restated Fourth Supplemental Memorandum, this Second Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement, First Amendment, First, Second, Third and Fourth Supplemental Memoranda, as amended. This Second Amendment shall be recorded against the Property.

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

16. Prevailing Wages. OWNER is aware of the requirements of California Labor Code Section 1720, et seq. (as amended by Stats 2001 ch 938 § 2 (S.B. 975)), and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., (collectively, the "Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, OWNER shall fully comply with such Prevailing Wage Laws. OWNER shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the OWNER's principal place of business and at the project site. OWNER shall defend, indemnify and hold the CITY, its officials, officers, employees, agents, contractors and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws."

17. Excusable Delay. Notwithstanding the foregoing provisions, performance by either party hereunder shall not be deemed to be in default where delay or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party, unusually severe weather, reasonably unforeseeable property conditions, acts of the other party, acts or failure to act of the other party or any other public or governmental agency or entity, or any causes beyond the control or without the failure of the party claiming an extension of time to perform. An extension of time for any such cause (an "Excusable Delay") shall be for the time period of the delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause or from the date of the notice if provided after such thirty-day period. Notwithstanding the foregoing, none of the foregoing events shall constitute

an Excusable Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming an Excusable Delay shall make a good faith effort to deliver such written notice within thirty (30) days after it obtains actual knowledge of the event and performance by either party of any of its obligations hereunder may be extended by written agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date the ordinance adopting this Second Amendment becomes effective.

**SIGNATURE PAGE
TO SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

**EDENGLEN ONTARIO LLC
"OWNER"**

Edenglen Ontario LLC, a Delaware limited liability company

By: _____

Name: Adrian Foley

Title: Authorized Representative

Date: _____

"CITY"

CITY OF ONTARIO

By: _____

Scott Ochoa, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

Edenglen DIF Credit Status/Potential Use of DIF Credit to Escrow to fund Improvements with Regional-Local Adjacent Splits													
DIF Program Category	Amount of DIF Paid	Previously Refunded DIF	Current Unredeemed DIF Credit	Projected DIF Credit from Remaining Completed DIF		Projected DIF Credit from NMC Builders*	Potential Refund Amounts with NMC Builders DIF		DIF Obligation for Remaining P-7 Units	Potential Refund Amounts with DIF from P7 units	DIF Obligation for Remaining P-8 Units	Potential Refund Amounts with DIF from P7 and P8 units	DIF Paid- Not Refunded - After Payment of DIF for all Units
				Eligible Projects - Edenglen Constructed	Potential Refund Amounts- Without further permits		Credit without additional Permits	Potential Refund					
Local Adjacent Streets	\$ 2,203,579	\$ (548,356)	\$ 1,655,223	\$ 377,721	\$ 377,721	\$ 1,413,892	\$ 1,655,223	\$ 121,685	\$ 1,776,908	\$ 118,850	\$ 1,895,758	\$ -	
Regional Streets	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 242,790	\$ -	\$ 148,727	\$ 148,727	\$ 145,261	\$ 242,790	\$ 51,197	
Local Adjacent Storm Drain	\$ 1,285,942	\$ (439,265)	\$ 846,677	\$ 775,977	\$ 775,977	\$ 656,967	\$ 846,677	\$ 253,897	\$ 1,100,574	\$ 84,275	\$ 1,184,849	\$ -	
Regional Storm Drain	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 865,861	\$ -	\$ 136,714	\$ 136,714	\$ 45,379	\$ 182,092	\$ -	
Local Adjacent Water	\$ 1,359,444	\$ (1,042,217)	\$ 317,227	\$ 546,405	\$ 546,405	\$ 338,183	\$ 317,227	\$ 153,142	\$ 470,369	\$ 122,980	\$ 593,349	\$ -	
Regional Water	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,833,345	\$ -	\$ 357,331	\$ 357,331	\$ 286,954	\$ 644,285	\$ -	
Local Adjacent Sewer	\$ 404,689	\$ -	\$ 404,689	\$ 206,387	\$ 206,387	\$ 85,370	\$ 291,757	\$ 28,261	\$ 320,018	\$ 31,340	\$ 351,358	\$ 112,932	
Regional Sewer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 18,840	\$ -	\$ 20,894	\$ -	\$ 39,734	
Local Ajacent Fiber	\$ 34,320	\$ (36,067)	\$ (1,747)	\$ -	\$ -	\$ 30,402	\$ -	\$ 31,095	\$ 30,402	\$ 45,482	\$ 30,402	\$ 44,428	
Regional Fiber	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 192,773	\$ -	\$ 13,326	\$ 13,326	\$ 19,492	\$ 32,819	\$ -	
Totals	\$ 5,287,974	\$ (2,065,905)	\$ 3,222,069	\$ 1,906,490	\$ 1,906,490	\$ 5,659,581	\$ 3,110,884	\$ 1,263,017	\$ 4,354,368	\$ 920,906	\$ 5,157,702	\$ 248,290	

Assumptions:
DIF Credit is issued for Storm Drain and Sewer Improvements that are not connected to Master Planned systems
Existing DIF Credit is reclassified to Regional and Local Adjacent splits
NMC Builders DIF Credit remains classified as Regional and Local Adjacent Credit
DIF Credits are not reduced by "DIF Credit Percentage Limitations" or "DIF Use Limitations"
Projected DIF Credit for Eligible Projects is based on Brookfield Estimates and not confirmed
All DIF Obligations are based upon current 2016 DIF Fee Amounts

Exhibit 1

Exhibit F-A

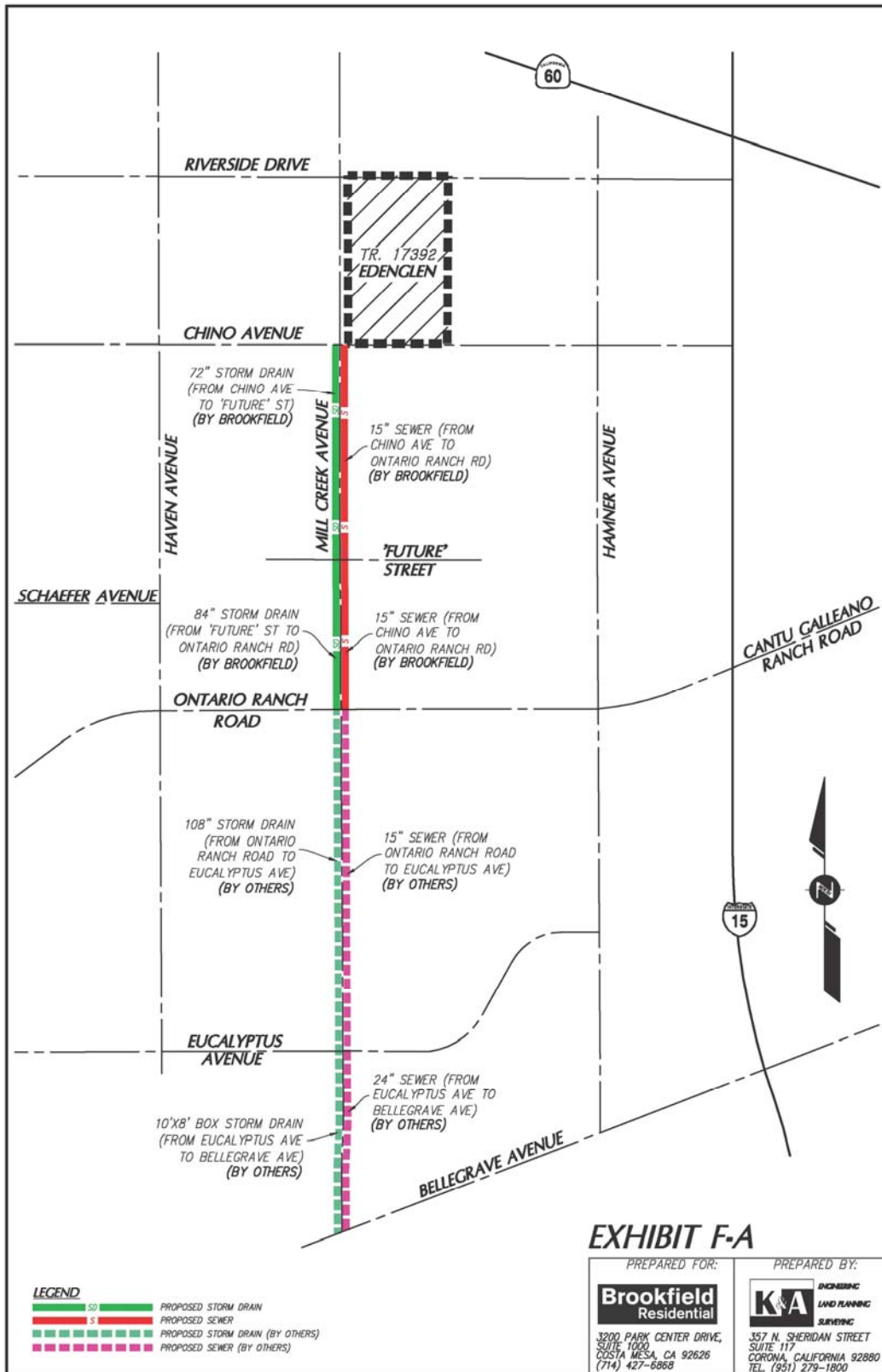


Exhibit F-B

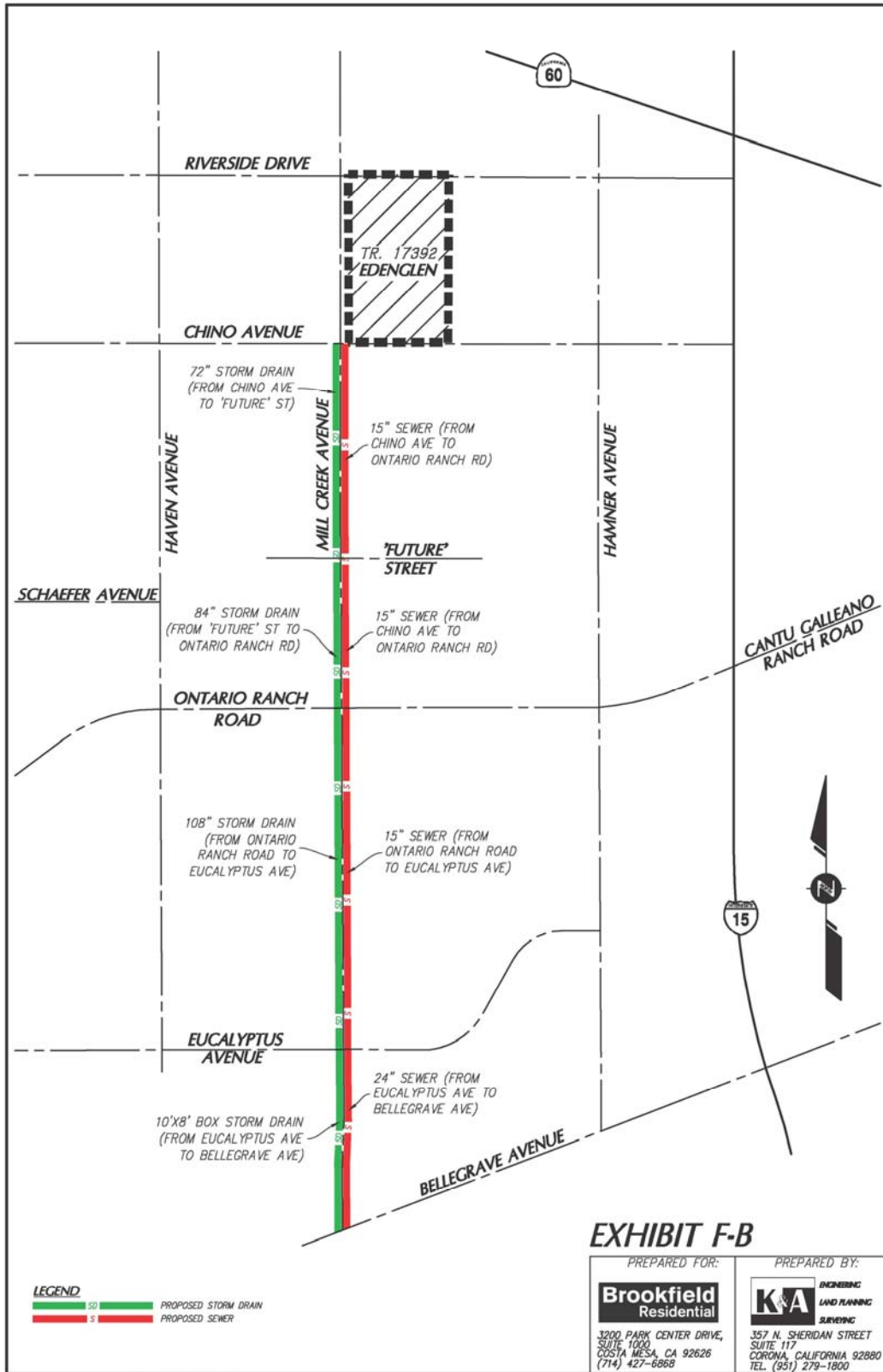
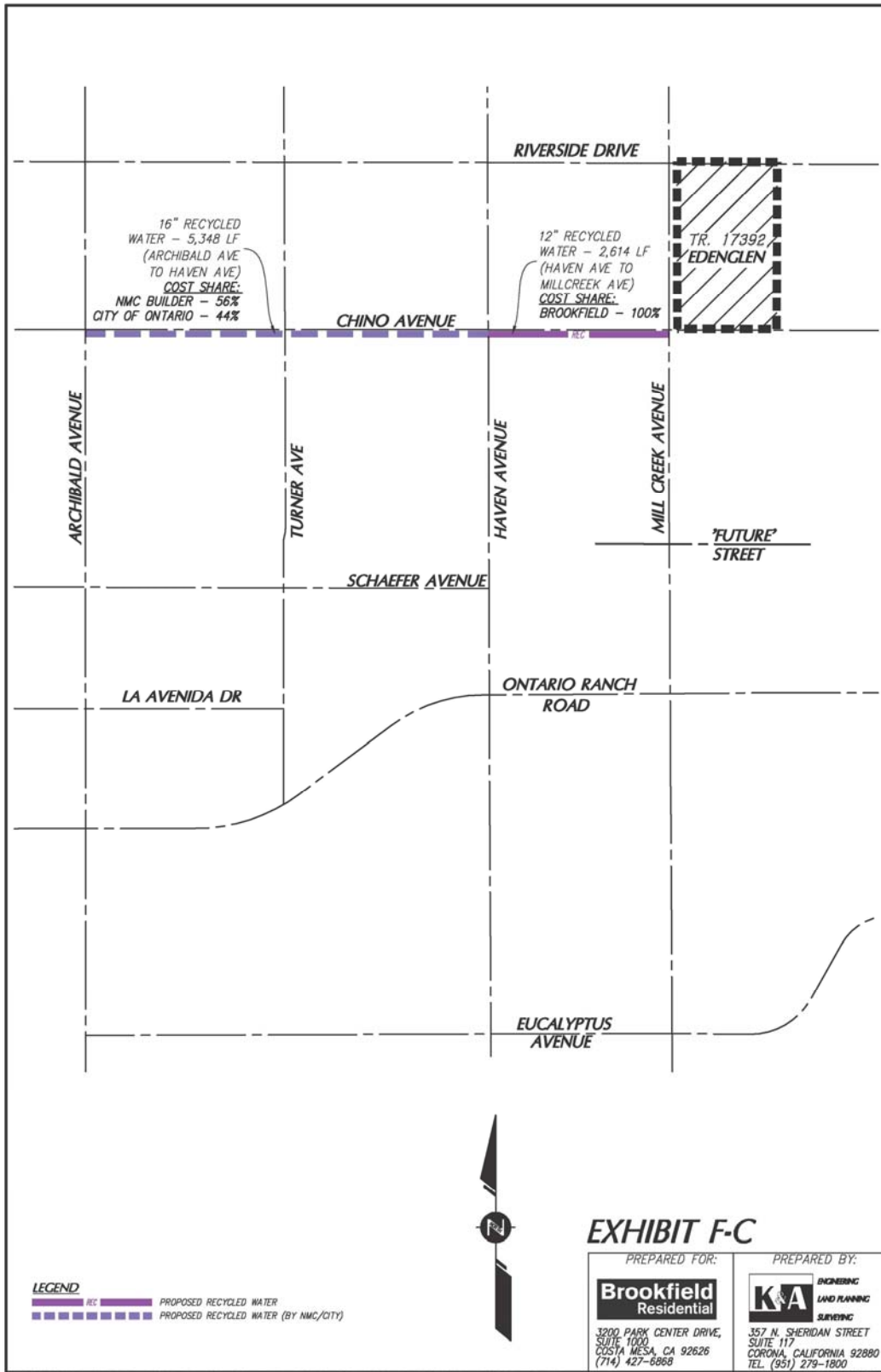


Exhibit F-C



CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

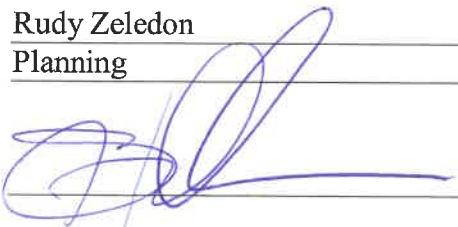
SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-002) BETWEEN THE CITY OF ONTARIO AND CVRC ONTARIO INVESTMENTS, LLC, FOR THE POTENTIAL DEVELOPMENT OF UP TO 480 RESIDENTIAL UNITS (FILE NO. PMTT16-004/TT 19966) ON 111.10 ACRES OF LAND WITHIN THE RESIDENTIAL SINGLE FAMILY DISTRICT OF PLANNING AREAS 2, 3, 4 AND 5 OF THE ARMSTRONG RANCH SPECIFIC PLAN, LOCATED ON THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND ONTARIO AVENUE (APNs: 218-101-01, 218-101-02, 218-101-07, 218-101-08, 218-102-10, AND 218-102-11)

RECOMMENDATION: That the City Council consider and adopt an ordinance approving a Development Agreement, File No. PDA16-002, (on file with the Records Management Department) between the City of Ontario and CVRC Ontario Investments, LLC, for the potential development of up to 480 residential units (File No. PMTT16-004/TT 19966) on 111.10 acres of land within the Residential Single Family district of Planning Areas 2, 3, 4 and 5 of the Armstrong Ranch Specific Plan, located on the southwest corner of Riverside Drive and Ontario Avenue.

COUNCIL GOALS: 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 Ontario Ranch

FISCAL IMPACT: The proposed Development Agreement will provide funding from a community facilities district (CFD) for additional City services required to support the Armstrong 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 Ontario Ranch development.

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

Prepared by: Rudy Zeledon
Department: Planning
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

9

BACKGROUND: On March 20, 2018, the City Council introduced and waived further reading of an ordinance approving the Development Agreement. CVRC Ontario Investments, LLC, and the City recognized that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, CVRC Ontario Investments, LLC, is entering into a Development Agreement with the City providing for the development of up to 480 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 CVRC Ontario Investments, LLC, project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 111.10 acres of land within Planning Area 2, 3, 4 and 5 of the Armstrong Specific Plan as shown in Exhibit A (Armstrong Specific Plan – Land Use Map). The Agreement grants CVRC Ontario Investments, LLC, a vested right to develop Tentative Tract Map 19966 as long as the CVRC Ontario Investments, LLC, complies with the terms and conditions of the Armstrong Specific Plan and Environmental Impact Report.

The term of the Development Agreement is for ten years with a five year option. The main points of the agreement address funding for all new City expenses created by the project which includes:

- Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, police, fire, open space/parks etc.);
- Public Service Funding to ensure adequate provisions of public services (police, fire and other public services);
- The creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities;
- The Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and
- Public infrastructure improvements required to support the development of TT19966.

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

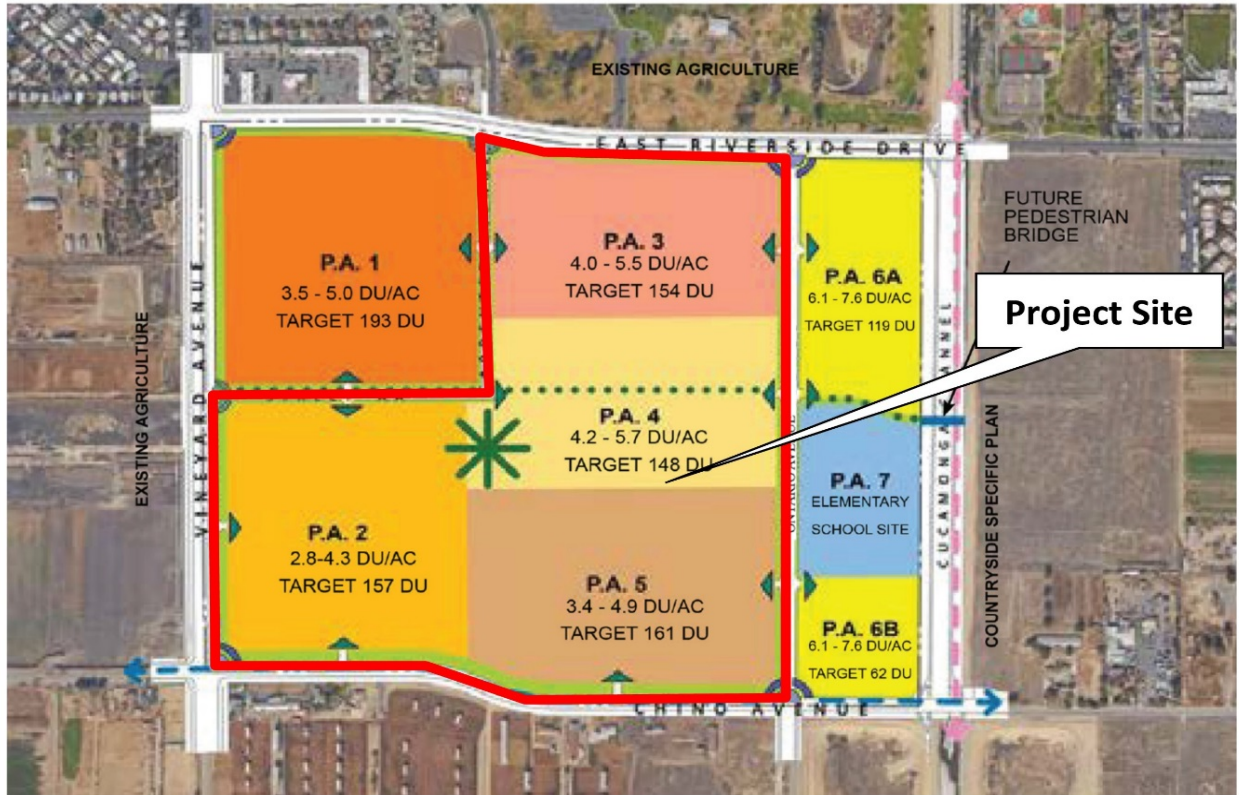
In considering the application at their meeting of February 27, 2018, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments; and with a 6 to 0 vote (Resolution No. PC18-021), recommended approval of the Development Agreement to the City Council.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The project site is located within the Airport Influence Area of the Ontario International Airport (ONT), and has been found to be consistent with the policies and criteria set forth within the ALUCP for ONT.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with File No. PSP15-002, the Armstrong Ranch Specific Plan for which an Environmental Impact Report (SCH# 2016111009) was adopted by the City Council on December 5, 2017. 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.

EXHBIT "A"
 Armstrong Specific Plan Land Use Plan



LEGEND

 P.A. 1	 P.A. 5	 COMMUNITY ENTRY	 ARMSTRONG PARK
 P.A. 2	 P.A. 6A/6B	 NEIGHBORHOOD ENTRY	 CITY MASTER PLAN MULTI-PURPOSE TRAIL
 P.A. 3	 P.A. 7	 CHARLOTTE ARMSTRONG TRAIL	 CUCAMONGA CREEK TRAIL
 P.A. 4			

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-002) BETWEEN THE CITY OF ONTARIO AND CVRC ONTARIO INVESTMENTS, LLC, FOR THE POTENTIAL DEVELOPMENT OF UP TO 480 RESIDENTIAL UNITS (FILE NO. PMTT16-004/TT 19966) ON 111.10 ACRES OF LAND WITHIN THE RESIDENTIAL SINGLE FAMILY DISTRICT OF PLANNING AREAS 2, 3, 4 AND 5 OF THE ARMSTRONG RANCH SPECIFIC PLAN, LOCATED ON THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND ONTARIO AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: 0218-101-01, 0218-101-02, 0218-101-07, 0218-101-08, 0218-102-10, AND 0218-102-11.

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

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

WHEREAS, attached to this Ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Development Agreement between the City of Ontario and CVRC Ontario Investments, LLC, for the potential development of up to 480 residential units (File No. PMTT16-004/TT 19966) on 111.10 acres of land within the Residential Single Family district of Planning Areas 2, 3, 4 and 5 of the Armstrong Ranch Specific Plan, located on the southwest corner of Riverside Drive and Ontario Avenue and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on October 24, 2017, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC17-078 recommending City Council certification of the Armstrong Specific Plan EIR and Issued Resolution PC17-079 recommending approval of the Armstrong Specific Plan (File No. PSP15-002); and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario issued Resolution No. 2017-140 certifying the Armstrong Specific Plan EIR (SCH# 2016111009); and

WHEREAS, on December 19, 2017, the City Council of the City of Ontario adopted Ordinance No. 3084 approving the Armstrong Specific Plan; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with File No. PSP15-002, the Armstrong Ranch Specific Plan for which an Environmental Impact Report (SCH# 2016111009) was adopted by the City Council on December 5, 2017. 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 February 27, 2018, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 6 to 0 to recommend approval (Resolution No. 18-021) of the Development Agreement to the City Council; and

WHEREAS, on March 20, 2018, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

NOW, THEREFORE, it is hereby found, determined, and ordained by the City Council of the City of Ontario as follows:

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Armstrong Specific Plan EIR (SCH# 2016111009) and supporting documentation. Based upon the facts and information contained in the previous Armstrong Specific Plan EIR (SCH# 2016111009) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with the Armstrong Specific Plan EIR (SCH# 2016111009), certified by the City of Ontario City Council on December 5, 2017, in conjunction with File No. PSP15-002.

(2) The previous Armstrong Specific Plan EIR (SCH# 2016111009) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Armstrong Specific Plan EIR (SCH# 2016111009), was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Armstrong Specific Plan EIR (SCH# 2016111009), reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Armstrong Specific Plan EIR (SCH# 2016111009), and all mitigation measures previously adopted with the Armstrong Specific Plan EIR (SCH# 2016111009), are incorporated herein by this reference.

SECTION 2. Subsequent or Supplemental Environmental Review Not Required. Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental to the Armstrong Specific Plan EIR (SCH# 2016111009) is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Armstrong Specific Plan EIR (SCH# 2016111009) that will require major revisions to the Armstrong Specific Plan EIR (SCH# 2016111009) due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Armstrong Specific Plan EIR (SCH# 2016111009) was prepared, that will require major revisions to the Armstrong Specific Plan EIR (SCH# 2016111009) due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Armstrong Specific Plan EIR (SCH# 2016111009) was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Armstrong Specific Plan EIR (SCH# 2016111009); or

(b) Significant effects previously examined will be substantially more severe than shown in the Armstrong Specific Plan EIR (SCH# 2016111009); or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Armstrong Specific Plan EIR (SCH# 2016111009) would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 4. *Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.* The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the DAB has reviewed and considered the facts and information contained in the Application and

supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the DAB, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

SECTION 5. Concluding Facts and Reasons. Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

a. The Development Agreement applies to 111.10 acres of land located at the southwest corner of Riverside Drive and Ontario Avenue, within the within the Residential Single Family district of Planning Areas 2, 3, 4 and 5 of the Armstrong Ranch Specific Plan, and is presently vacant; and

b. WHEREAS, the properties to the north of the Project site is within the LDR-5 (Low Density Residential and the OS-R Open Space Recreational zoning districts and are developed with Residential and Park land uses. The properties to the east are within the Single Family Residential Planning Areas 6a, 6b and 7 of the Armstrong Ranch Specific Plan and are developed with residential and agricultural land uses. The property to the south are within the SP (AG) zoning district and is developed with a flood control basin and dairy/agricultural land uses. The property to the west is within the SP (AG) zoning district and is developed with dairy/agricultural land uses; and

c. The Development Agreement establishes parameters for the development of Tentative Tract Map 19966 within the Residential Single Family district of Planning Areas 2, 3, 4 and 5 of the Armstrong Ranch Specific Plan for the potential development of 480 residential units. The Development Agreement also grants CVRC Ontario Investments, LLC, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Armstrong Specific Plan; and

d. The Development Agreement focuses on Tentative Tract Map 19966 that proposes to subdivide to subdivide 111.10 acres of land into 480 numbered lots for single family residential and open space purposes and 92 lettered lots for public streets, neighborhood edges, paseos, parks and parkways; and

e. The Development Agreement will provide for the development of up to 480 single family units as established for Planning Areas 2, 3, 4 and 5 of the Armstrong Ranch 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. The environmental impacts of this project previously reviewed in conjunction with File No. PSP15-002, the Armstrong Ranch Specific Plan for which an Environmental Impact Report (SCH# 2016111009) was adopted by the City Council on December 5, 2017. This Application introduces no new significant environmental impacts. This application introduces no new significant environmental impacts; and

j. All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

SECTION 6. City Council Action. Based upon the findings and conclusions set forth in paragraphs 1, 2, 3, 4 and 5 above, the City Council hereby APPROVES the Development Agreement subject to each and every condition set forth in the Armstrong Specific Plan and EIR, incorporated by this reference.

SECTION 7. Indemnification. 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 8. 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 9. 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 10. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 11. **Publication and Posting.** 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 15 days following 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 3rd day of April 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3095 was duly introduced at a regular meeting of the City Council of the City of Ontario held March 20, 2018 and adopted at the regular meeting held April 3, 2018 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3095 duly passed and adopted by the Ontario City Council at their regular meeting held April 3, 2018 and that Summaries of the Ordinance were published on March 27, 2018 and April 10, 2018, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A:

**File No. PDA16-002;
Development Agreement**

(Development Agreement follows this page)

**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

CVRC Ontario Investments LLC, a Delaware limited liability company,

_____, 2018

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA16-002

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2018 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and CVRC Ontario Investments, LLC, a Delaware limited liability company (hereinafter collectively, "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 through the preparation and consideration of the Armstrong Ranch Specific Plan Final Environmental Impact Report (State Clearinghouse No. 2016111009 (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 Armstrong Ranch 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; and

WHEREAS, CVRC Ontario Investments LLC as "OWNER" represents that, upon its exercise of its option to acquire the Property, it will become the OWNER of the fee simple title to the Property and currently has the right to acquire fee simple title to the Property from the current owner(s) thereof; and

WHEREAS, CVRC Ontario Investments LLC, has obtained, or shall obtain the consent of the current owner or owners of the Property to enter into and execute this Development Agreement prior to executing this Development Agreement with the City; and

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch; and

WHEREAS, the City of Ontario and NMC Builders LLC have previously entered into the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve the Easterly Portion of the New Model Colony in August 2012 (the "Construction Agreement Amendment") and such agreement requires that the City reserve water capacity exclusively for members of NMC Builders LLC ("Members"); and

WHEREAS, Certificates of Net Water Availability made available through the construction of the Phase 1 water system Improvements are provided to Members only and the provisions of the Construction Agreement Amendment require 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 a Certificate of Net MDD Water Availability; and

WHEREAS, OWNER acknowledges that OWNER shall be required to become a Member of NMC Builders LLC and the Property is characterized as a Phase 2 Property under the provisions of the Amendment to the Construction Agreement between the City and NMC Builders (the "Phase 2 Water Amendment) and OWNER shall be required to participate in the funding of the Phase 2 Water Improvements in order to receive the required Certificate of Phase 2 Net Water Availability; and

WHEREAS, the Property is defined in the "Phase 2 Water Amendment" as a "Phase 2 Water Property" and, as such, shall be required to provide funding for CITY's

future construction of the "Phase 2 Water Improvements" which will result in the availability of additional Net MDD Water Availability required for the development; and

WHEREAS, OWNER is made aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit "I"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658.

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 "Carpenter Sewershed Contribution" means the payment by OWNER to CITY of OWNER's required contribution pursuant to the Amendment to the Amended and Restated Construction Agreement between NMC Builders and CITY, for the costs to the CITY of allowing additional sewer flows into the Eastern Trunk Sewer in-lieu of OWNER's requirement construct the sewer infrastructure required to direct the sewer flows from the Project to the Western Trunk Sewer pursuant to the Construction Agreement Amendment.

1.1.4 "Construction Agreement Amendment" means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders LLC as of the 21st day of August 2012 and all amendments thereto.

1.1.5 "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.

1.1.6 "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.

1.1.7 "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.

1.1.8 "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 superseded, including by amendment or replacement.

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

1.1.10 “Effective Date” means the date that OWNER completes the purchase of the Property or the date that the ordinance approving this Agreement goes into effect, whichever occurs later.

1.1.11 “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.

1.1.12 “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.

1.1.13 “General Plan” means the General Plan adopted on January 27, 2010.

1.1.14 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract Nos. 19966-1, 19966-2, 19966-3 and 19966 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibits”).

1.1.15 “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.

1.1.16 “Model Units” means a maximum of six (6) units in each Phase constructed by OWNER prior to the construction of any Production units for the respective phase and not offered for sale and occupancy prior to the issuance of building permits for any of the Production Units for the respective phase.

1.1.17 “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.

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

1.1.19 “Phase 2 Water Amendment” means the amendment to the Construction Agreement between the City of Ontario and NMC Builders LLC dated September 19, 2017.

1.1.20 “Phase 2 Water EDUs” means the number of equivalent dwelling units or non-residential square footage assigned to a current or future Member upon payment to City of the Phase 2 Water Participation Fee for the Project and evidenced by the issuance by CITY of a Certificate of Phase 2 Net MDD Availability in the form attached as Exhibit G.

1.1.21 “Phase 2 Water Improvements” means those improvements set forth in Amended Exhibit C-1-R, of the Phase 2 Water Amendment.

1.1.22 “Phase 2 Water Participation Fee” means the fee paid to City, to fund the Project’s respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by City. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of units, and land use category for residential units or the number of square feet, and land use category for non-residential square footage of the Project.

1.1.23 “Phase 1A Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for the Production Units in Phase 1A and as shown in Exhibit F- Phase 1A Improvements.

1.1.24 “Phase 1B Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for the Production Units in Phase 1B.

1.1.25 “Phase 1A Units” means the first one hundred twenty-five (125) units for which the CITY issues building permits to OWNER and shall include up to six (6) Model Units.

1.1.26 “Phase 1B Units” means the next one hundred fourteen (114) units for which the CITY issues building permits to OWNER and shall include up to six (6) Model Units.

1.1.27 “Phase 2 Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units in Phase 2 and as shown in Exhibit F – Phase 2 Improvements”

1.1.28 “Phase 2 Units” means the next one hundred twenty-eight (128) units for which the CITY issues building permits to OWNER after the issuance of building permits for the Phase 1A and Phase 1B Units and including up to six (6) additional Model Units.

1.1.29 “Phase 3 Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units in Phase 3 and as shown in Exhibit F –Phase 3 Improvements”

1.1.30 “Phase 3 Units” means the next one hundred thirteen (113) units for which the CITY issues building permits to OWNER after the issuance of the building permits for the Phase 1A and Phase 1B Units and the Phase 2 Units and including up to six (6) additional Model Units.

1.1.31 “Production Units” means all units constructed for sale and occupancy by OWNER and excludes a maximum of twenty-four (24) Model Units constructed by OWNER for promotion of sales.

1.1.32 “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.

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

1.1.34 “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.

1.1.35 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Armstrong Ranch Specific Plan.”

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 Amendment. 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 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 Exhibits

Exhibit “F-Phase 1A” - Phase 1A Improvements Exhibit

Exhibit “F-Phase 1B” - Phase 1B Improvements Exhibit

Exhibit “F- Phase 2” - Phase 2 Improvements Exhibit

Exhibit “F – Phase 3” – Phase 3 Improvements Exhibit

Exhibit “G” – Form of Certificate of Net MDD to be issued by CITY

Exhibit “H” – Form of Certificate of DIF Credit to be issued by CITY

Exhibit “I” - Form of Disclosure letter

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 has a binding option to acquire the Property and, upon exercise of such option, will become the owner of the fee simple title to the Property and has the right to acquire fee simple title to the Property 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) OWNER shall have obtained building permits for at least sixty percent (60%) 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. After OWNER completes the purchase of the Property, 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. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit I) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(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 Amendment. To the extent any future amendment to the Construction Agreement Amendment 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.

(e) Ten (10) days after written notice from the current owner of the Property to the CITY of OWNER's failure to acquire fee title to the Property by October 28, 2019 (the "Closing Date") or such later date as may be agreed upon by the current owner and the OWNER.

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:

Scott Ochoa, 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:

CVRC Ontario Investments, LLC
c/o City Ventures
3121 Michelson Drive, Suite 150
Irvine, CA 92612
Attn: Mike White
Email: mike@cityventures.com
Phone: (949) 258-7538

with a copy to:

John P. Yeager
O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612
Email: jyeager@oneil-llp.com
Phone: (949) 798-0722

(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 Cal. 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 on the phasing of Improvements. Attached hereto as Exhibit "E" is a phasing plan which is based on the OWNER's established phasing for the completion of needed Improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as the Exhibits "F-1A", "F-1B", "F-2", and "F-3" are a description of the Improvements needed for the development of the Property, inclusive of the Phase 1A, Phase 1B, Phase 2 and Phase 3 Improvements ("the Infrastructure Improvement Exhibits").

3.4.2 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 six (6) Model Units in each phase. City may issue a maximum of six (6) building permits for Model Units in each phase for a total number of Model Units of twenty-four (24). The plan to be submitted by OWNER for CITY approval prior to the issuance of building permits for Model Units in each phase shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units.

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,

- or,
- (b) Increase the density or intensity of use of the Property as a whole;
 - (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 Works; 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 OWNER agrees that development of the Project shall require the design and construction of Storm Drain facilities to serve the Property as described in the attached the Exhibits F-1A, F-1B, F-2 and F-3. OWNER shall be responsible for the design and construction, at OWNER's sole cost and expense, of the necessary extension of master planned Storm Drain facilities.

3.7.2 OWNER agrees that development of the Project shall require the design and construction of street improvements, at OWNER's sole cost and expense, on Riverside Drive, Vineyard Avenue, Carpenter Avenue, Hellman Avenue and Chino Avenue including the design and construction to widen the bridge on Riverside Drive as further described in the attached Exhibit F-1A.

3.7.3 OWNER agrees that development of the Property shall require the design and construction of the extension of permanent master planned water and recycled water utility infrastructure, at OWNER's sole cost and expense, as described in Exhibits F-1A, F-1B, F-2 and F-3 consisting generally of the construction of the extension of permanent master planned water and recycled water utility infrastructure to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units for the Property prior to completion of the Phase 1A and Phase 1B water and recycled water Improvements as described in Exhibit F – Phase 1A and Exhibit F- Phase 1B.

3.7.4 OWNER agrees that NMC Builders shall be responsible for funding a portion of the design and construction of an additional extension of master planned recycled water infrastructure in Riverside and Haven Avenues to be constructed by CITY. These master planned recycled water Improvements shall also serve the Project. OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the NMC Builders portion of the recycled water improvements in Riverside and Haven Avenues known as the "Phase 2 Recycled Water Improvements." If OWNER has not previously deposited such amount with NMC Builders, then CITY shall be entitled to withhold issuance of any further building permits for the Project unless and until OWNER deposits the amount of OWNER's capital contribution with NMC Builders for the design and construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements.

3.7.5 OWNER agrees that development of the Property shall require the design and construction of extension of permanent master planned sewer infrastructure at OWNER's sole cost and expense, as described in the attached Exhibits F-1A, F-1B, F-2 and F-3 consisting generally of the construction of the extension of sewer infrastructure to serve the Property.

3.7.6 OWNER agrees that development of the Property shall require the design and construction of the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibits F-1A, F-1B, F-2 and F-3 consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the Property.

3.7.7 Timely Construction of Public Improvements. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each of the four (4) Phases of the Project as shown on the attached Infrastructure Improvement Exhibits for each Phase of the Project. OWNER shall also be responsible for compliance with any and all other tract map conditions. Unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other

required improvements and all other conditions or requirements of Tract Map 19966-1 and Tract Map 19966-2 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for any Phase 1A and Phase 1B Production Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within each such "B" Tract Map.

3.7.8 CITY and OWNER agree that OWNER shall construct and complete all public infrastructure required for Phase 1A and Phase 1B of the Project as shown on Exhibit F-Phase 1A and Exhibit F-Phase 1B, prior to, and as a condition precedent to, CITY's issuance of the first building permit for Production Units for the Property.

3.7.9 CITY and OWNER agree that OWNER shall design, construct and complete all public infrastructure for Phase 2 as shown in Exhibit F-Phase 2 prior to, and as a condition precedent to, CITY's issuance of a building permit for any Production Units in the Phase 2 area of the Property. Unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions or requirements of each Tract Map in the Phase 2 area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within any such "B" Tract Map.

3.7.10 CITY and OWNER agree that OWNER shall design, construct and complete all public infrastructure for Phase 3 as shown in Exhibit F-Phase 3 prior to, and as a condition precedent to, CITY's issuance of any building permits for the Phase 3 area of the Property. Unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each Tract Map in the Phase 3 area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within any such "B" Tract Map.

3.7.11 CITY and OWNER agree that OWNER shall pay to CITY, OWNER's fair share of the costs to design and construct the Pedestrian Bridge across the Cucamonga Creek Channel as shown on Exhibit F-1A, prior to, and as a condition precedent to, OWNER requesting and CITY's granting of permits for the Phase 1A and Phase 1B Production Units. OWNER's fair share of the costs to design and construct the Pedestrian Bridge shall be thirty-three percent (33%) of the estimated costs to design and construct the Pedestrian Bridge. The estimated costs shall be determined by the City Engineer and CITY shall notify OWNER of the estimated costs at the time OWNER requests that CITY grant building permits for Phase 1A and 1B Production Units.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement Amendment 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 Owners 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.

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.

4.2.1.1 Payment of Development Impact Fee in the Regional Water Category. In lieu of the payment of the Development Impact Fee in the Regional Water Category, OWNER shall be required to pay a Phase 2 Water Participation

Fee as defined as described Section 4.7.3. The timing of such payment shall be as required in Section 4.7.3. CITY agrees that the payment of the Phase 2 Water Participation fee by OWNER shall be in-lieu of any further payment of Development Impact Fee in the Regional Water Category.

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. 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. 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 approximately 5.50 net acres within the Property shall be improved as open space park areas and shall be transferred to a homeowners' association and the homeowners' association shall be responsible for all maintenance of all developed open space park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide 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 in the attached Infrastructure Improvement Exhibits ("Exhibit F-Phase 1A", "Exhibit F- Phase 1B", "Exhibit F- Phase 2" and "Exhibit F- Phase 3") and any and all 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 Nos.19966-1, 19966-2, 19966-3 and 19966.

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

4.3.3 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 Amendment, 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.

4.4 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 4.4.2.1 through 4.4.2.3. 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 4.4.1 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 Forty-Three Cents (\$2.43) per square foot of residential development within OWNER’s Project or, if pre-paid as set forth below, Two Dollars Thirteen Cents (\$2.13) 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, Forty-Three Cents (\$2.43) and the Two Dollars Thirteen Cents (\$2.13) per square foot amounts shall automatically be increased annually, commencing on July 1, 2018, 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 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 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.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations. OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), 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 4.5.1.

4.6 Public Services Funding Fee.

4.6.1 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.

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Nine Hundred Seventy-Fivedollars (\$1,975.00) 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 this Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Eighty-Seven dollars and fifty cents (\$987.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development Density**" of the Project, as defined in Section 3.7.2.3 of the Construction Agreement Amendment. The First Installment shall be due

and payable 30 days after the Effective Date of this Development Agreement. If OWNER does not complete the purchase of the Property, OWNER shall request and CITY shall refund to OWNER the amount of the First Installment paid by OWNER.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Eighty-Seven dollars and fifty cents (\$987.50) 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, 2019. 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.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty-Nine Cents (\$.59) 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, 2019. 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.

4.7 Net MDD/Water Availability Equivalents.

4.7.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders 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 and/or OWNER. OWNER acknowledges that the provisions of the Construction Agreement Amendment require 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, except to the bearer of a Certificate of Net MDD Water Availability.

4.7.2 Requirement for Amendment to Construction Agreement with NMC Builders. OWNER and CITY agree that OWNER's payment to CITY required by Section 4.7.3 below represents OWNER's contribution to the funding required for the future construction of the Phase 2 Water Improvements and the availability of additional Net MDD Water Availability required for the development of the Property described in Exhibit

A of this Agreement. CITY and OWNER also agree that CITY approval of this Agreement shall be conditioned upon OWNER agreement to become a Member of NMC Builders.

4.7.3 CITY issuance Water Availability Equivalents. Within 30 days after the Effective Date of this Development Agreement OWNER shall pay to City the applicable Phase 2 Water Participation Fee. The Phase 2 Water Participation Fee shall be calculated based on the amount of the projected Regional Water DIF, the Maximum Development Density and the approved land use category for such Project. The calculated amount of the Phase 2 Water Participation Fee shall be paid to City within 30 days after the Effective Date of this Development Agreement or, at OWNER's option, the Phase 2 Water Participation Fee may be paid to City in two (2) installments. The first installment shall be fifty percent (50%) of the total Phase 2 Water Participation Fee and such first installment shall be due and payable to City within 30 days after the Effective Date of this Development Agreement. The second installment shall be the remaining amount of the Phase 2 Water Participation Fee and such second installment shall be due and payable to City within one (1) year after the payment of the first installment, or prior to, and as a condition precedent to the recording of any final tract map for the Project, whichever occurs first. Upon OWNER's complete payment to CITY of the Phase 2 Water Participation Fee CITY shall issue a Certificate of Water Availability Equivalents in the form attached hereto as Exhibit G. Such Water Availability Equivalents Certificate shall be issued by CITY within thirty (30) days of the receipt of such required payment. CITY and OWNER agree that the amount of Water Availability Equivalents issued to OWNER shall be based on the maximum projected need for Water Availability Equivalents required for the Property based upon water demand factors and assumptions listed in Exhibit C-2R of the Phase 2 Water Amendment, "Water Demand Equivalents by Land Use" for each land use category. Additionally, within thirty (30) days of CITY's receipt of OWNER complete payment as required under Section 4.7.3, CITY shall issue a certificate of DIF Credit against OWNER's DIF obligations in the regional water DIF Category. The amount of the DIF Credit issued by CITY shall be equivalent to OWNER's payment to CITY of the Phase 2 Water Participation Fee. The form of the Certificate of DIF Credit shall be as described in Exhibit H, attached hereto and incorporated herein.

4.7.3.1 The Phase 2 Water Participation Fee may be paid by OWNER, any subsequent owner of the Property (or any portion thereof), or any combination of the foregoing, in accordance with Section 4.7.2. OWNER, on behalf of itself and any and all subsequent owner(s) of the Property (or any portion thereof), agrees and acknowledges that, should the OWNER or any subsequent owner of the Property (or any portion thereof) request, demand or seek any administrative or judicial relief seeking a return of any portion of the Phase 2 Water Participation Fee (individually or collectively, a "Refund Request"), then CITY shall refund to OWNER, the Phase 2 Water Participation Fee previously paid, and the Development Agreement and any and all land use entitlements (including, but not limited to the Development Agreement and Tentative Tract Map Nos. 19966-1, 19966-2, 19966-3 and 19966) shall be automatically deemed null and void and of no further force or effect, without further action on the part of any party, and without any liability on the part of the CITY, its officials, officers or employees. Without limiting the nature of the foregoing, in the event of a Refund Request and CITY's

payment of the requested refund, OWNER and any and all subsequent owner(s) of the Property (or any portion thereof) will be deemed to have automatically consented to a termination of the Development Agreement as well as a reversion of Tract Map 18937 to acreage pursuant to the Subdivision Map Act (California Government Code section 66499.16(b)(1)). Additionally, all related Certificates of Net MDD Availability and all Certificates of DIF Credit issued to OWNER in recognition of OWNER's payment of the Phase 2 Water Participation Fee shall be null and void and of no value.

4.7.4 Use of Net MDD Water Availability. OWNER shall provide evidence of sufficient Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to approval of any final Parcel Map for the Property. The amount of Water Availability Equivalents required for the approval of a final Parcel Map 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.

4.8. 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 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.

4.9 Storm Water Capacity Availability.

4.9.1 OWNER and CITY agree that OWNER is not eligible to utilize the regional storm water treatment facilities to meet the requirements of the NPDES permit and the requirements of Section 3.8 of the Construction Agreement Amendment shall not apply to the Property. OWNER shall provide on-site storm water treatment facilities to meet the requirements of the NPDES permit.

4.10 Carpenter Sewershed Contribution. OWNER shall pay to CITY the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) prior to, and as a condition precedent to OWNER's request to CITY for issuance of the first building permit for a Production Unit for Phase 1A of the Project. Upon receipt of the OWNER's Carpenter Sewershed Contribution, CITY shall issue a certificate of DIF Credit in the Local Adjacent DIF category to OWNER in the amount of OWNER's Carpenter Sewershed Contribution

4.11 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.

4.11 Compliance with Public Benefits Requirements.

4.11.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.11, 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 8.4 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). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, 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 Amendment. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement Amendment and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any B Map, the property subject to such B Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,442.00 per Single Family Detached Dwelling Unit, \$1,250.00 per Multiple-Family Dwelling Unit, \$1,048.00 per Gated Apartment Community Dwelling Unit, and \$.27 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"

CVRC Ontario Investments, LLC,
a Delaware limited liability company

By: CV Communities, LLC,
a Delaware limited liability company
Managing Member

By: _____
Name: _____
Title: _____

By: DB Ontario Land Investment, LLC,
a Delaware limited liability company
Managing Member

By: RCCD, Inc.,
a California corporation,
Manager

By: _____
Name: _____
Title: _____

"CITY"

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
 COUNTY OF SAN BERNARDINO)

On _____, 2018 _____,
 before me, _____,
 personally appeared _____,

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

- Individual
- Corporate Officer

 Title(s)

- Partner(s)
 - Limited
 - General

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

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

DESCRIPTION OF ATTACHED DOCUMENT

 Title or Type of Document

 Number Of Pages

 Date Of Document

 Signer(s) Other Than Named Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

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

PARCEL 8: (APN: 0218-101-01, 02, 07 AND 08)

LOTS 23, 24, 25 AND 26, SECTION 10, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6, PAGE 15, OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

PARCEL 9: (APN: 0218-102-10 AND 11)

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8 IN BLOCK 2 OF MOIST BELT TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 12, PAGE 45 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**EXHIBIT "B"
TO DEVELOPMENT AGREEMENT**

Map showing Property and its location

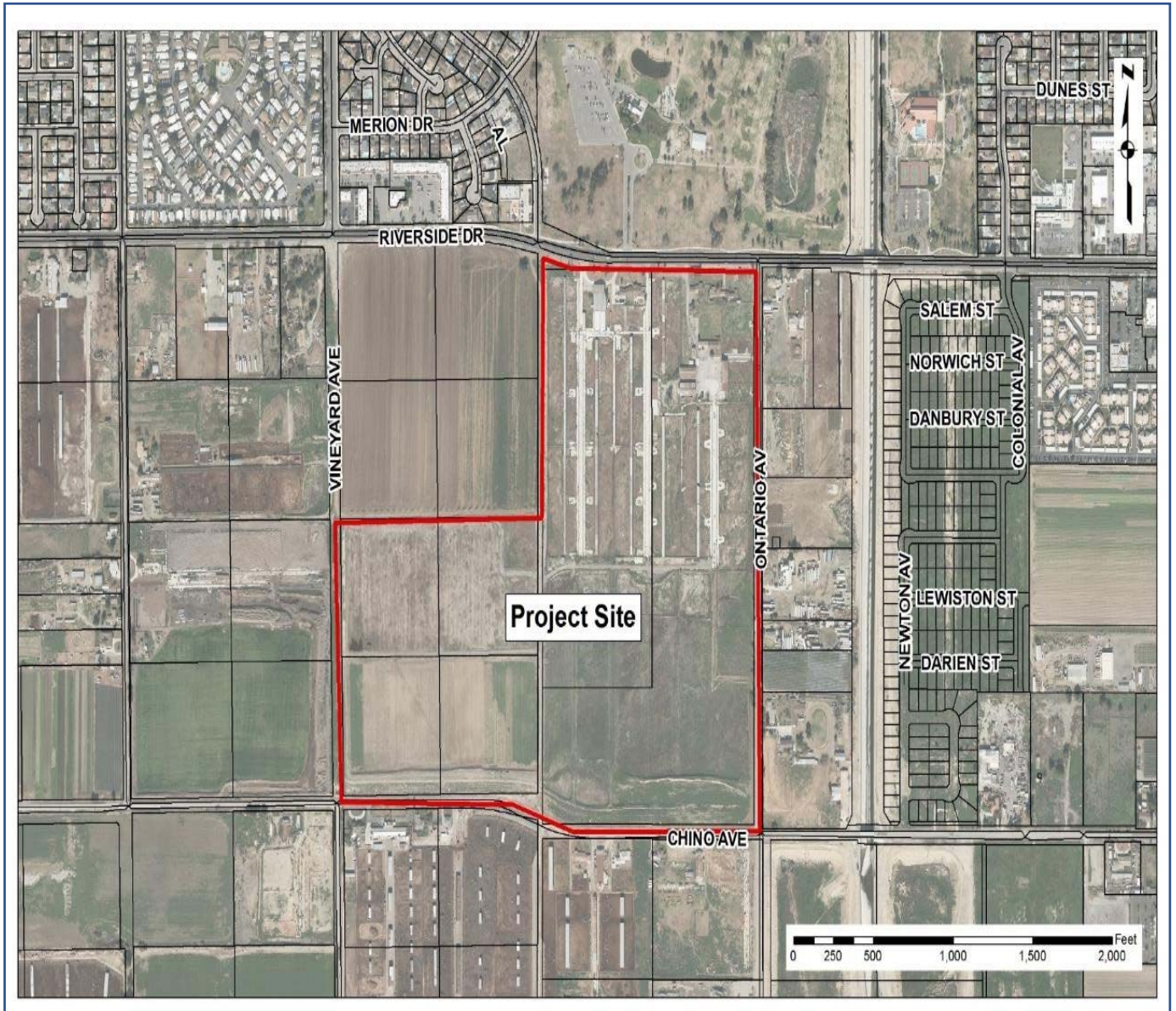


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On October 24, 2017, the Planning Commission:

- a) Issued Resolution No. PC17-078 recommending City Council adopt and certify the Armstrong Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC17-079 recommending City Council approval of the Armstrong Specific Plan (File No. PSP15-002).

On December 5, 2017, the City Council:

- a) Issued Resolution No. 2017- 140 certifying the Armstrong Specific Plan Environmental Impact Report;
- c) Issued Ordinance No. 3084 approving the Armstrong Specific Plan (File No. PSP15-002).

On February 27, 2018, the Planning Commission:

- a) Issued Resolution No. PC18-*** recommending City Council approval of the Development Agreement (File No. PDA16-002);
- b) Issued Resolution No. PC18-*** approving Tentative Tract Map 19966 (File No. PMTT16-004).

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. Armstrong Specific Plan Environmental Impact Report, Resolution No. 2017-140
2. Armstrong Specific Plan (PSP15-002), Ordinance No. 3084
3. Tentative Tract Map No. 19966, Resolution No. PC18-***
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

Phasing Plan

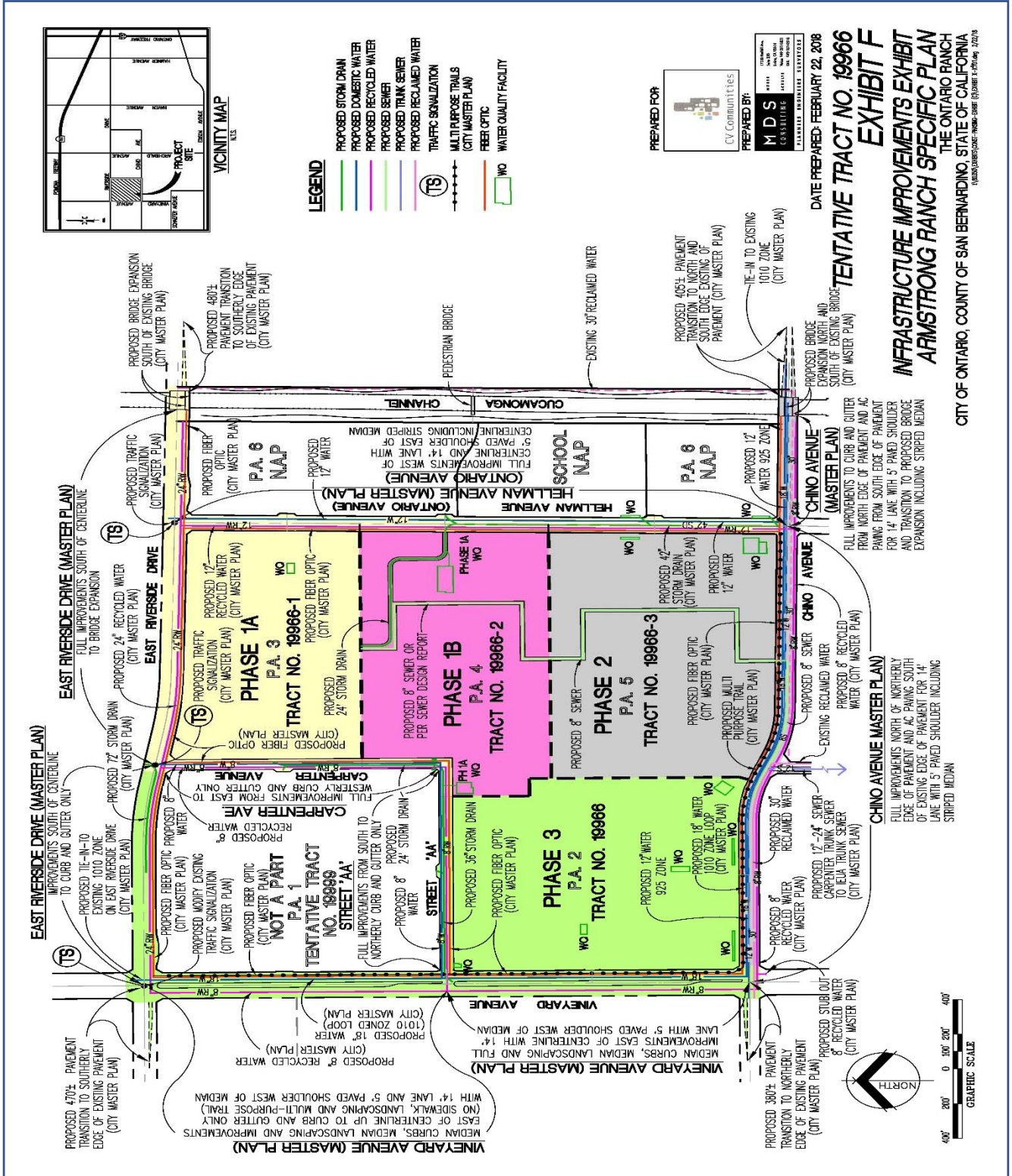


EXHIBIT "F" Continued

Required Infrastructure Improvements - Phase 1B

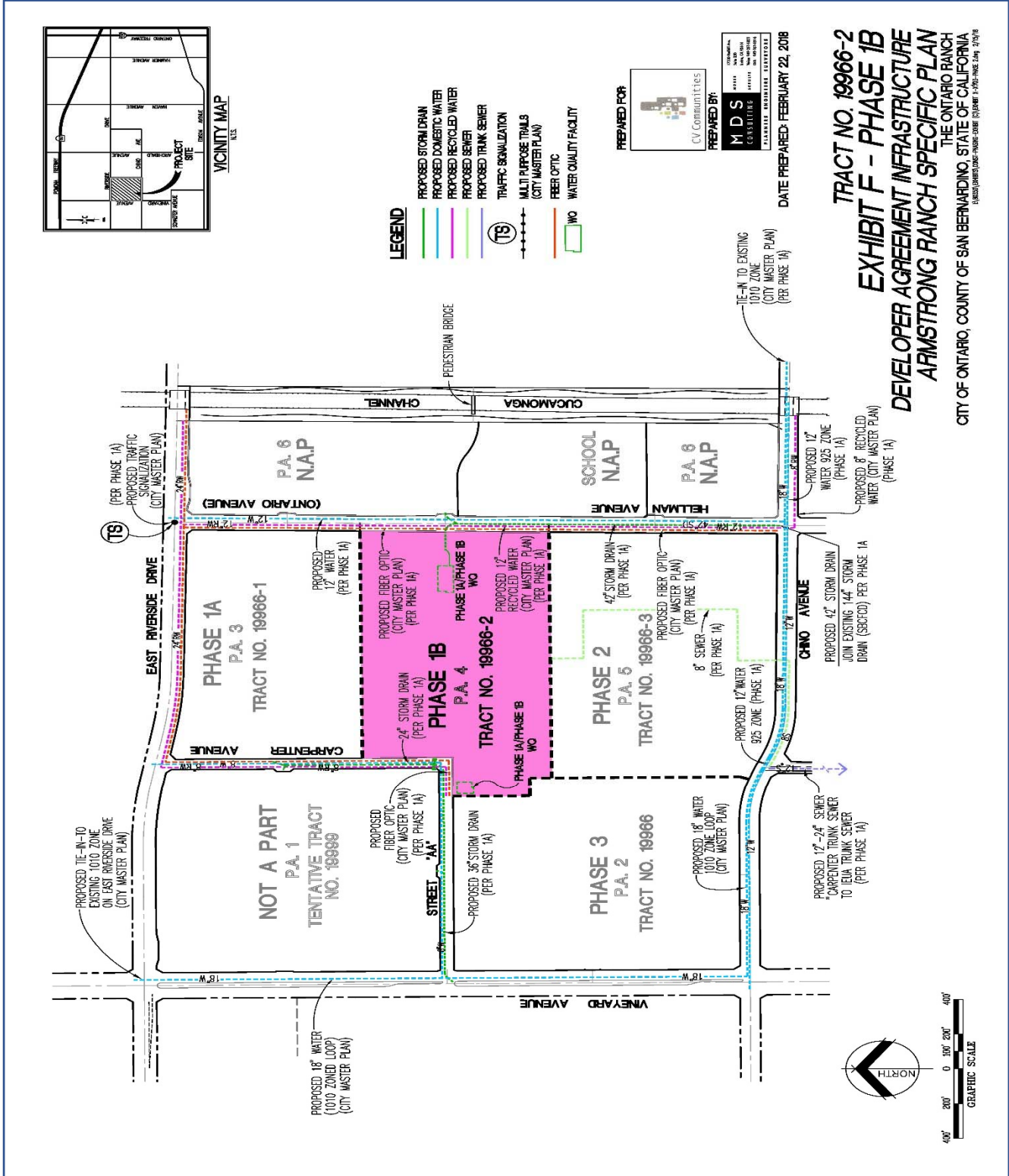


EXHIBIT "F" Continued

Required Infrastructure Improvements - Phase 3

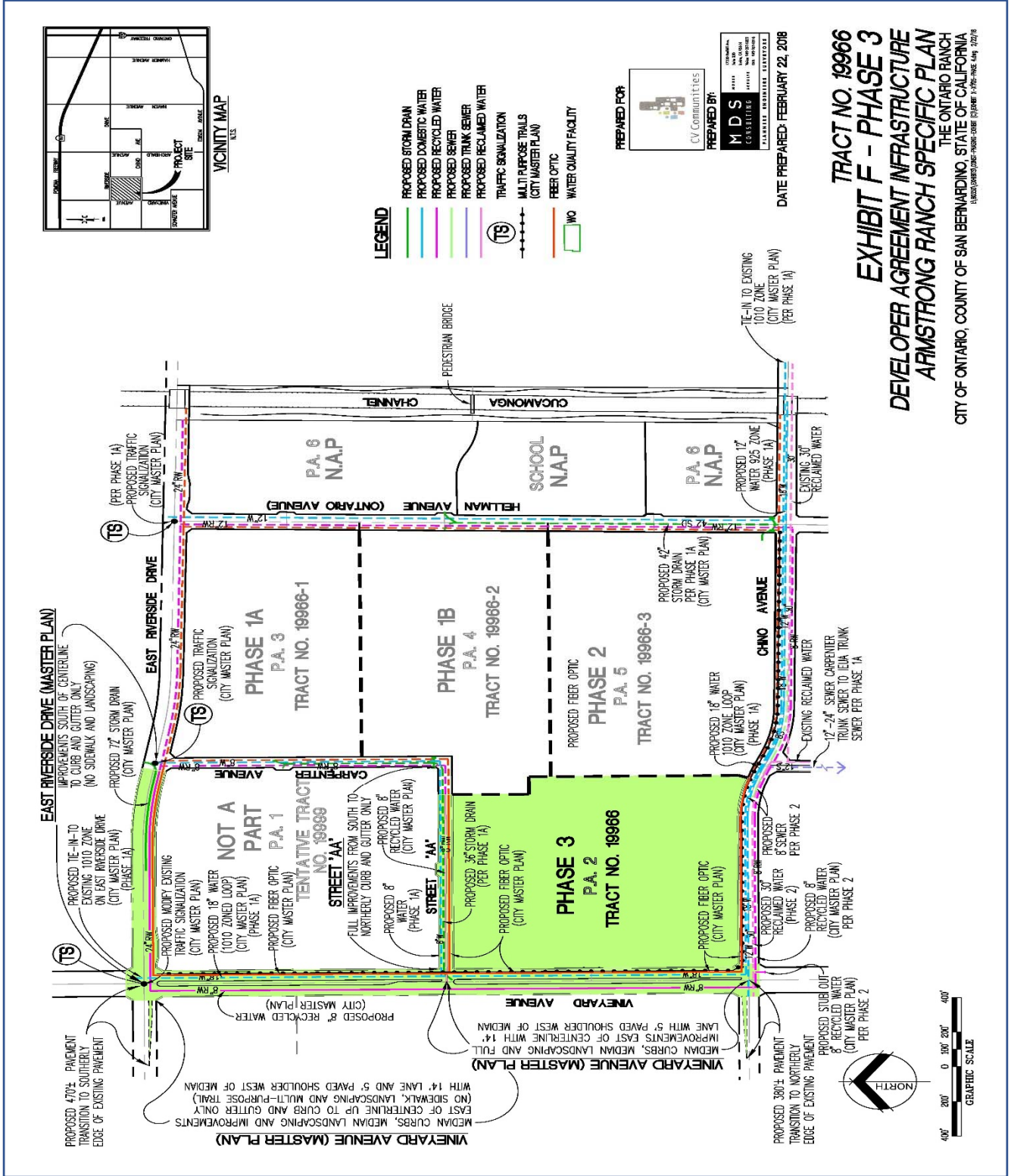


EXHIBIT "G"

FORM OF CERTIFICATE OF PHASE 2 NET MDD WATER AVAILABILITY

Pursuant to Section 7 of that certain Amendment to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to serve an Easterly Portion of the New Model Colony between the City of Ontario, a California municipal corporation, and NMC Builders, LLC, a California limited liability corporation, hereinafter called "Developer", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Amendment", the City of Ontario hereby certifies based on receipt of payment of the Phase 2 Water Participation Fee and Development Entitlement of Member's Project, that Member is entitled to the following Phase 2 Net MDD Water Availability.

Residential Phase 2 Net MDD Water Availability _____ Units

Non-Residential Phase 2 Net MDD Water Availability _____ Square Feet

Scott Ochoa, City Manager

Dated: _____

EXHIBIT "H"

FORM OF CERTIFICATE OF REGIONAL WATER DIF CREDIT

Pursuant to Section 7 of that certain Amendment to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to serve an Easterly Portion of the New Model Colony between the City of Ontario, a California municipal corporation, and NMC Builders, LLC, a California limited liability corporation, hereinafter called "Developer", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Amendment", the City of Ontario hereby certifies that the Member of Developer is entitled to the following amount of Regional Water DIF Credits:

Amount of Regional Water DIF Credit: \$ _____

Scott Ochoa, City Manager

Dated: _____

CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: CONSTRUCTION CONTRACT FOR EXPANSION OF THE CNG FACILITY AT THE ONTARIO MUNICIPAL SERVICES CENTER (OMSC)

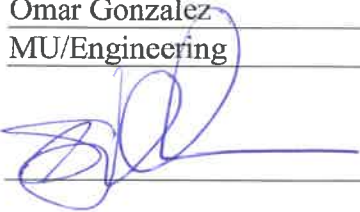
RECOMMENDATION: That the City Council approve the plans and specifications and award Contract No. MS 2015-16-1 (on file with the Records Management Department) to Fueling and Service Technologies, Inc. (FASTECH) of Buena Park, CA, for the construction of OMSC CNG Facility Expansion in the amount of \$131,136 plus a 15% contingency of \$19,670, for a total amount of \$150,806; 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: Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Invest in the City's Infrastructure (Water, Sewers, Streets, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2017-18 Capital Improvement Program includes appropriations related to a grant from South Coast Air Quality Management District's (SCAQMD) Mobile Source Air Pollution Reduction Review Committee Local Government Match Program (AB 2766) and the Mobile Source Air Fund for construction of the CNG Facility Project. The recommended contract award to Fueling and Service Technologies, Inc. is \$131,136 plus a 15% contingency of \$19,670 for a total amount of \$150,806. The contract is grant funded, and there is no impact to the General Fund.

BACKGROUND: The SCAQMD adopted a "Rule for Clean On-Road Residential and Commercial Refuse Collection Vehicles" that require public and private solid waste collectors to acquire alternative fuel refuse collection vehicles when procuring or leasing vehicles. The SCAQMD regulations require that agencies convert their vehicles over to alternative fuels. The expansion and upgrades to the CNG station will provide additional dispensing stations required for the new fleet of vehicles and will meet the SCAQMD requirements. Presently, the City operates seventy-two (72) time-fill CNG stations for its fleet and four (4) fast-fill CNG stations for public use. To accommodate the growing number of CNG fleet vehicles, an additional twenty-four (24) time-fill stations will be constructed.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Omar Gonzalez
Department: MU/Engineering
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

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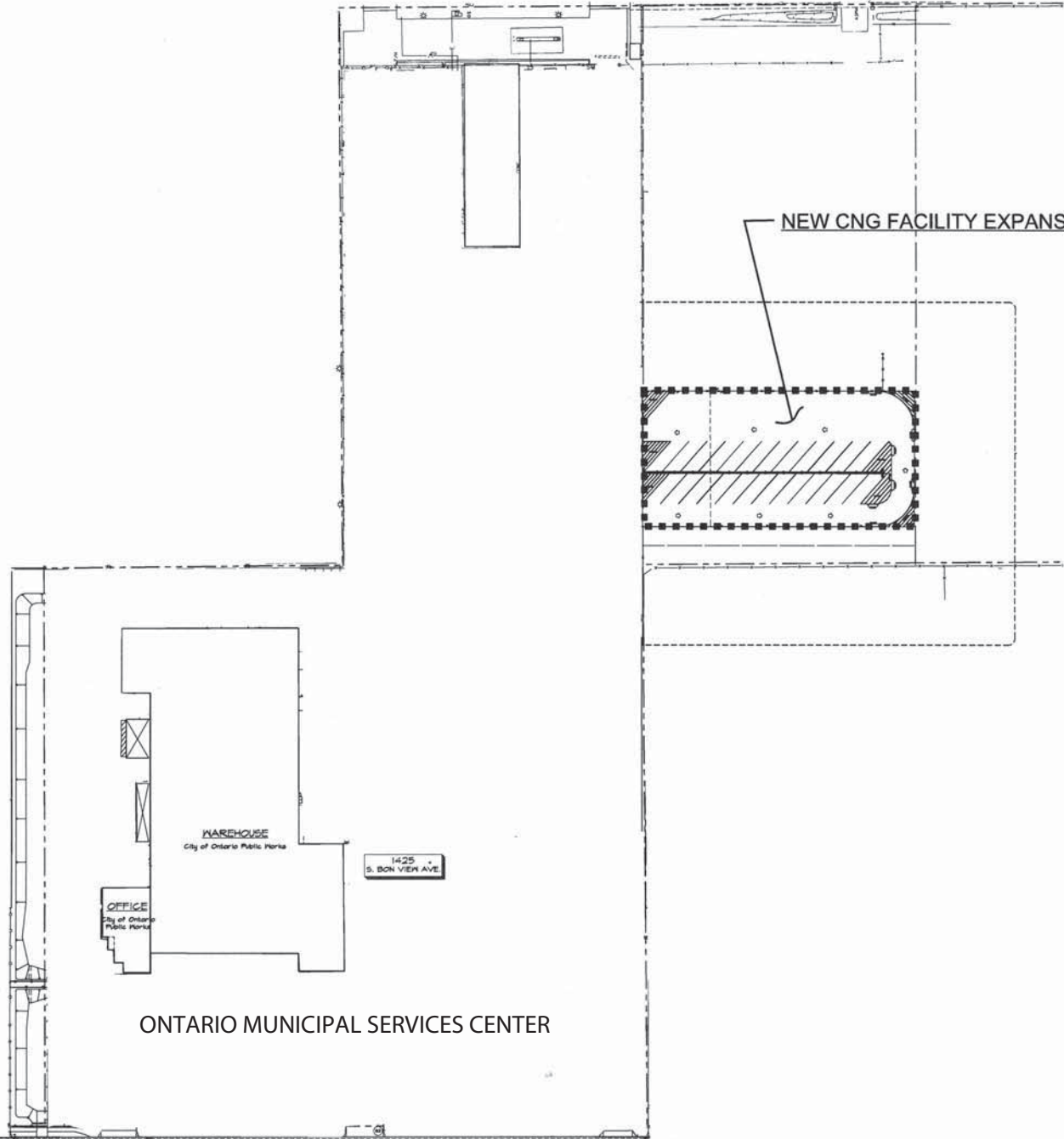
On January 19, 2018, ten (10) bids were received through the City's electronic bid management system in response to Bid No. 890. The bids ranged from \$131,136 to \$324,554. The bids are summarized below.

<u>Bidder</u>	<u>Location</u>	<u>Bid Amount</u>
Fueling & Service Technologies, Inc.	Buena Park, CA	\$ 131,136
Allsup Corporation	Upland, CA	\$ 190,482
Tomco, LLC	Lake Elsinore, CA	\$ 214,335
AMTEK Construction	Whittier, CA	\$ 230,199
Horizons Construction Co. Int'l, Inc.	Orange, CA	\$ 237,672
EFS West	Valencia, CA	\$ 251,078
Gilman Builders, Inc.	Irvine, CA	\$ 275,000
Fleming Environmental, Inc.	Fullerton, CA	\$ 276,659
Clean Energy, Inc.	Newport Beach, CA	\$ 287,003
TruStar Energy	Rancho Cucamonga, CA	\$ 324,554

Fueling and Service Technologies, Inc. (FASTECH) located in Buena Park, CA, submitted the lowest responsive bid that met all the plan and specification requirements for the project. Staff recommends the award of the contract to FASTECH based on their expertise and their ability to perform the work in a timely manner and the successful completion of this type of work in the past.

SOUTH CUCAMONGA AVE

NEW CNG FACILITY EXPANSION



WAREHOUSE
City of Ontario Public Works

OFFICE
City of Ontario Public Works

1425
S. BON VIEW AVE

ONTARIO MUNICIPAL SERVICES CENTER

SOUTH BON VIEW AVE

OVERALL SITE PLAN



CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: CONSTRUCTION CONTRACT FOR RECYCLED WATER MAIN IMPROVEMENTS IN RIVERSIDE DRIVE AND JURUPA STREET

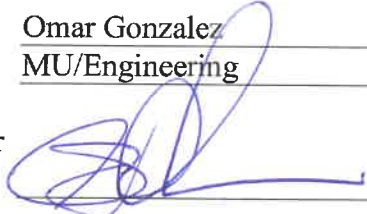
RECOMMENDATION: That the City Council approve the plans and specifications and award Contract No. UT 1002 (on file with the Records Management Department) to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, for the construction of the Recycled Water Improvements for Riverside Drive and Jurupa Street in the amount of \$3,312,219 plus a 15% contingency of \$496,833, for a total amount of \$3,809,052; 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: 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 Ontario Ranch

FISCAL IMPACT: The Fiscal Year 2017-18 Budget includes appropriations from the Water Capital Fund for this project. Pursuant to subsequent agreements under the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony with the NMC Builders, LLC, the NMC Builders have agreed to reimburse the City \$1,000,000 towards the construction of recycled water main between Archibald and Haven Avenues which is equivalent to the proportionate share of the project benefitting Ontario Ranch. Also, \$400,000 is expected to be reimbursed from Ontario Ranch water development impact fees pursuant to a separate agreement being negotiated with Brookfield for funding recycled water service to the Edenglen development. The recommended construction contract award to Norstar Plumbing and Engineering, Inc. is for \$3,312,219 plus a 15% contingency of \$496,833, for a total amount of \$3,809,052. There is no impact to the General Fund.

BACKGROUND: The City's 2015 Urban Water Management Plan identifies the use of recycled water as a critical element of the City's supply to meet its future demand for water. As a result of statewide severe drought conditions and water use restrictions, the use of potable (drinking) water for irrigation of

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Omar Gonzalez
Department: MU/Engineering
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____

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ornamental landscapes or turf on medians will be permanently prohibited in most instances. Expanding the use of recycled water provides a long-term sustainable water source that is not subject to the same limitations under drought conditions as potable water supplies. Recycled water is used for irrigation and industrial applications as approved by the California Division of Drinking Water and will result in significant reductions in the City’s long-term reliance on more expensive and increasingly less reliable imported potable water supplies.

The proposed project will construct recycled water main improvements in Riverside Drive (Archibald Avenue to Mill Creek Avenue) and in Jurupa Street (Hofer Ranch Road to Haven Avenue). The Riverside segment will serve existing customers including Colony High School, Grace Yokley Middle School, the Edenglen development, portions of Creekside, as well as provide a backbone pipeline serving further developments in Ontario Ranch. The Jurupa segment will serve existing developments within the Hofer Ranch Specific Plan and other business. The work under this contract consists of installation of approximately 12,300 linear feet of 16-inch, 12-inch and 8-inch diameter recycled water mains; installation of recycled water appurtenances; connection to existing recycled water connections at various street intersections; water main improvements in Riverside Drive at Deer Creek Channel; implementation of traffic control during construction, and pavement repair and street restoration.

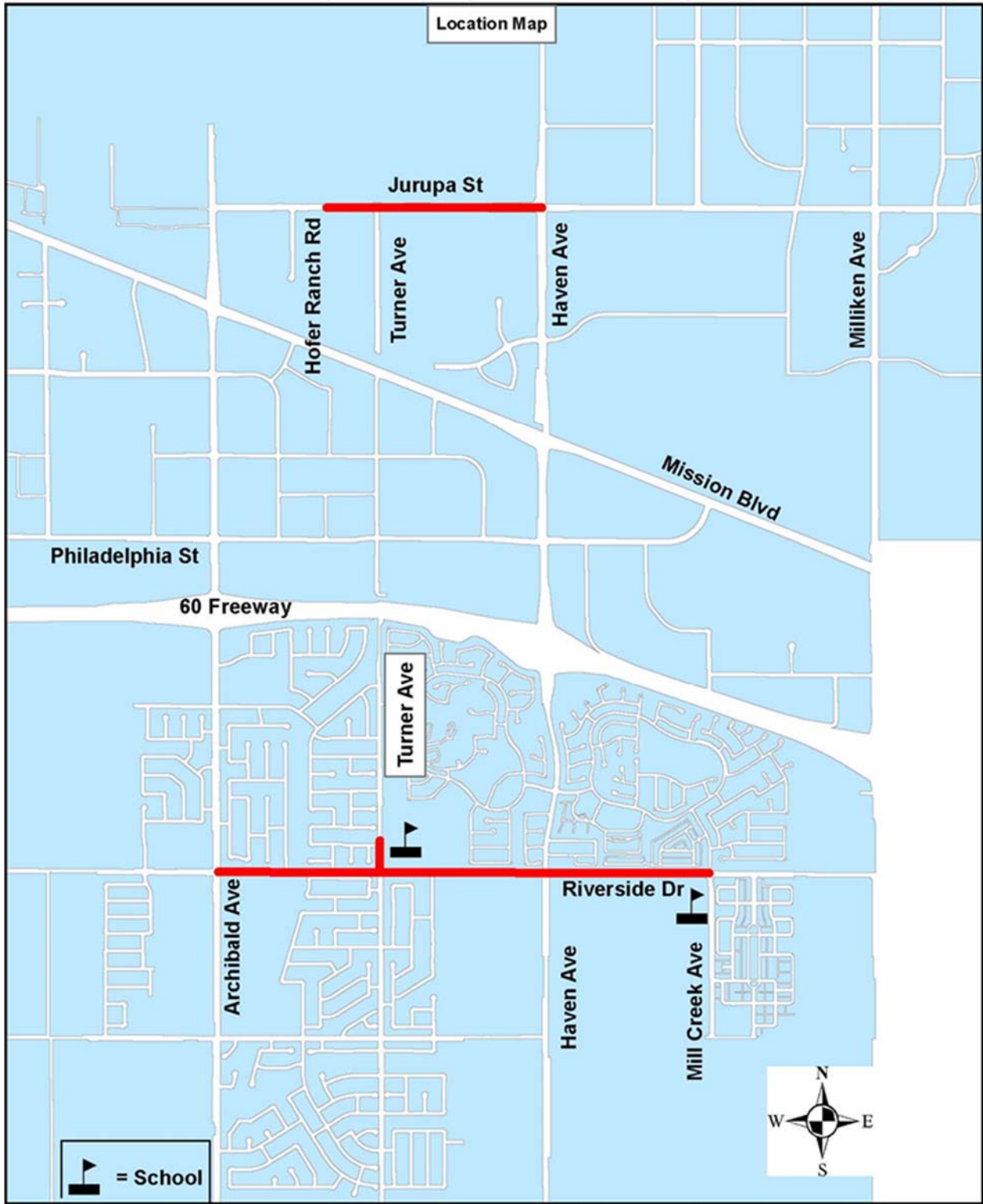
On January 22, 2018, ten (10) bids were received through the City’s electronic bid management system in response to Bid No. 885. The bids ranged from \$3,312,219 to \$5,989,424. The bids are summarized below.

<u>Bidder</u>	<u>Location</u>	<u>Amount</u>
Norstar Plumbing and Engineering	Alta Loma, CA	\$3,312,219
Downing Construction	Redlands, CA	\$3,762,254
Borden Excavating	Calimesa, CA	\$3,775,557
Colich and Sons	Gardena, CA	\$3,957,935
DDH Apple Valley Construction	Apple Valley, CA	\$4,096,251
TE Roberts	Orange, CA	\$4,252,180
Weka	Highland, CA	\$4,498,033
Ferreira Coastal Construction	Chino, CA	\$4,613,530
Kana Pipeline	Riverside, CA	\$4,884,986
Utah Pacific Construction	Murrieta, CA	\$5,989,424

Staff recommends award to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, based on their expertise, ability to perform the work in a timely manner, and their successful completion of this type of work in the past.

ENVIRONMENTAL REVIEW: The project is a component of the 2012 Infrastructure Master Plans approved by the City Council on December 4, 2012. A Mitigated Negative Declaration was prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. The Mitigated Negative Declaration addressed the drainage, sewer, water and recycled water master plans (2012 Infrastructure Master Plans) including their alignments, pipe sizes and installation for the City. An analysis of the project has determined that there is no deviation from the description of this component of the overall 2012 Infrastructure Master Plans. Furthermore, a separate Mitigated Negative Declaration for the Riverside Drive portion of the project was adopted by City Council on September 6, 2016. Thus, no further CEQA analysis is required.

**Riverside Drive Recycled Water Main Project
From Archibald Avenue to Mill Creek Avenue
(OMUC Project No. UT 1002)**



CITY OF ONTARIO

Agenda Report
April 3, 2018

SECTION:
ADMINISTRATIVE REPORTS/
DISCUSSION/ACTIONS

SUBJECT: CONFIRMATION OF APPOINTMENT OF DEPUTY POLICE CHIEF DEREK WILLIAMS TO POLICE CHIEF

RECOMMENDATION: That the City Council confirm the City Manager's appointment of Derek Williams to the position of Police Chief.

COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner
Purse City's Goals and Objectives by Working with Other Governmental Agencies

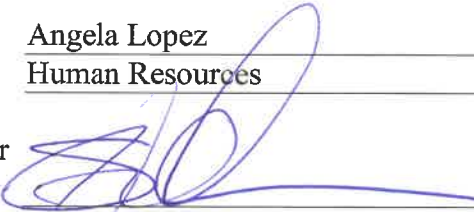
FISCAL IMPACT: None.

BACKGROUND: Police Chief Brad Kaylor announced his retirement effective April 1, 2018. Pursuant to Ontario Municipal Code Section 2-3.204 (a): "Police Chief. The Police Chief shall be appointed by the City Manager for an indefinite term, subject to confirmation by the Council." It is recommended that Deputy Police Chief Derek Williams be confirmed as Police Chief beginning April 1, 2018.

Deputy Police Chief Williams is a graduate of Westchester High School and holds an Associate Degree in Liberal Arts from San Bernardino Valley College and a Bachelor of Science degree in Criminal Justice Administration from the California Baptist University. He was hired in 1991 as a Police Recruit and attended the San Bernardino County Sheriff's Department 103rd basic academy session. Upon his graduation from the academy, he was promoted to Police Officer as a patrol officer with the Ontario Police Department.

Deputy Police Chief Derek Williams has worked a variety of assignments, which include: Patrol, Narcotics/Gangs, SWAT, Bicycle Patrol, Ontario Mills, and Investigations. Deputy Police Chief Derek Williams has held supervisory and command positions in: Patrol, Personnel and Training, Investigations, and Narcotic/Gangs.

STAFF MEMBER PRESENTING: Scott Ochoa, City Manager

Prepared by: Angela Lopez
Department: Human Resources
City Manager Approval: 

Submitted to Council/O.H.A. 04/03/2018
Approved: _____
Continued to: _____
Denied: _____