

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
NOVEMBER 21, 2017**

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 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Briones v. City of Ontario, et al., U.S. District Court, Central District of California, Case No. 5:17-cv-590 DMG*

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 1156 W. Holt Blvd; 1150 W. Holt Blvd; 1134 & 1136 W. Holt Blvd; 1124 W. Holt Blvd; 1108 W. Holt Blvd; 1102 W. Holt Blvd; 115 N. Mountain Ave; 142 N. Mountain Ave; 122 N. Mountain Ave; 122 N. Mountain Ave; 1050 W. Holt Blvd; 1050 W. Holt Blvd; 1020 W. Holt Blvd; 1034 W. Holt Blvd; 1201 W. Holt Blvd; 1151 W. Holt Blvd; 1141 W. Holt Blvd; 1125 W. Holt Blvd; 1113 W. Holt Blvd; 1065 W. Holt Blvd; 1051 W. Holt Blvd; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Larry James and Leticia Sarinana (1156 W. Holt Blvd.); John M. Culhane Trust (1150 W. Holt Blvd); Lorne and Angie Corradi (1134 & 1136 W. Holt Blvd; Lorne and Angie Corradi 1124 W. Holt Blvd; Rodolfo and Ana Elvira Gomez (1108 W. Holt Blvd); Henley Pacific SD LLC (1102 W. Holt Blvd); Walter and Janice Duong (115 N. Mountain Ave); TNS Family LLC (142 N. Mountain Ave); Rodolfo Medrano Jauregui (122 N. Mountain Ave); Rodolfo Medrano Jauregui (122 N. Mountain Ave); Rodolfo Medrano Jauregui (122 N. Mountain Ave); Guadalupe and Rodolfo Jauregui (1050 W. Holt Blvd); Guadalupe and Rodolfo Jauregui (1050 W. Holt Blvd); Ayad and Fatina Jaber (1020 W. Holt Blvd); Ayad and Fatina Jaber (1034 W. Holt Blvd); Riad and Tamer Bacily (1201 W. Holt Blvd); Tim and Donna Pfutzenreuter (1151 W. Holt Blvd); Holt Auto Center LLC (1141 W. Holt Blvd); Francisco Sandoval Jr. (1125 W. Holt Blvd); EMSET LLC (1113 W. Holt Blvd); G & M Gapco LLC (1065 W. Holt Blvd); Paint Bucket Inc. (1051 W. Holt Blvd); Under negotiation: Price and terms of payment.

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

PLEDGE OF ALLEGIANCE

Council Member Dorst-Porada

INVOCATION

Pastor Paul Gilkes, Loveland Worship Center

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

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

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

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

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of October 17, 2017, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills September 24, 2017 through October 7, 2017 and **Payroll** September 24, 2017 through October 7, 2017, when audited by the Finance Committee.

3. A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS

That the City Council adopt a resolution for recovery of fees and costs incurred in abating property and dangerous building violations, as well as administrative citations and civil penalties associated with property maintenance violations, and placing special assessments on the San Bernardino County Tax Rolls.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

4. PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL STRUCTURAL PLAN CHECKING AND INSPECTION SERVICES/MC LEAN & SCHULTZ, INC.

That the City Council approve Professional Services Agreements (on file in the Records Management Department) with McLean & Schultz, Inc. of Brea, California, and Danken, Inc. of Ladera Ranch, California, to provide professional engineering structural plan check and inspection services; and authorize the City Manager to execute the contracts and to extend the agreements for up to four (4) additional one (1) year periods at the City's discretion, consistent with future budgets approved by the City Council.

5. FISCAL YEAR 2017-18 FIRST BUDGET UPDATE REPORT

That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2017-18 First Budget Update Report.

6. AN LS-1 OPTION E AGREEMENT WITH SOUTHERN CALIFORNIA EDISON FOR STREET LIGHT REPLACEMENT

That the City Council approve an LS-1 Option E Agreement (on file in the Records Management Department) with Southern California Edison (SCE) to replace SCE-owned street lights from High Pressure Sodium Vapour (HPSV) to Light Emitting Diode (LED) with no upfront cost to the City, and authorize the City Manager to execute the Agreement.

7. REVISIONS TO THE COMPENSATION AND BENEFITS PROFILE FOR NON-REPRESENTED PART-TIME EMPLOYEES DUE TO INCREASES IN THE STATE'S MINIMUM WAGE

That the City Council approve and authorize the City Manager to execute revisions to the Salary Schedule section and any non-substantive changes to update the current Compensation and Benefits Profile (on file with the Records Management Department) for employees in the non-represented Part-Time Employees Group to ensure compliance with the State of California's Labor Code regarding minimum wage changes effective January 2018; and authorize the City Manager to implement any future legally mandated changes to minimum wage rates to ensure ongoing legal compliance.

8. AN ORDINANCE APPROVING AN AMENDMENT TO THE ONTARIO MUNICIPAL CODE, REESTABLISHING TITLE 4 (PUBLIC SAFETY), CHAPTER 13, TITLED "OFF-STREET PARKING PROHIBITIONS AND RESTRICTIONS"

That the City Council consider and adopt an ordinance reestablishing Ontario Municipal Code Title 4 (Public Safety), Chapter 13, titled "Off-Street Parking Prohibitions and Restrictions."

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE ONTARIO MUNICIPAL CODE, REESTABLISHING CHAPTER 13 OF TITLE 4 (PUBLIC SAFETY), TO BE TITLED "OFF-STREET PARKING PROHIBITIONS AND RESTRICTIONS," AND MAKING FINDINGS IN SUPPORT THEREOF.

9. A RESOLUTION APPROVING REVISIONS TO AN EXISTING LED FREEWAY SIGN WITHIN THE VIEW CORRIDOR OF THE ONTARIO CENTER SPECIFIC PLAN, LOCATED ON THE NORTH SIDE OF INTERSTATE 10 FREEWAY BETWEEN HAVEN AND MILLIKEN AVENUES (APN: 0210-211-23)

That the City Council adopt a resolution approving File No. PSGN17-108, approving revisions to the freeway sign located within the view corridor of The Ontario Center Specific Plan.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSGN17-108, A SIGN PERMIT APPLICATION FOR REVISIONS TO AN EXISTING LED FREEWAY SIGN WITHIN THE VIEW CORRIDOR OF THE ONTARIO CENTER SPECIFIC PLAN, LOCATED ON THE NORTH SIDE OF INTERSTATE 10 FREEWAY, SOUTH OF INLAND EMPIRE BOULEVARD, BETWEEN HAVEN AND MILLIKEN AVENUES, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0210-211-23.

10. PURCHASE OF A NEW REPLACEMENT POLICE HELICOPTER AND ASSOCIATED EQUIPMENT/AIRBUS HELICOPTERS/CNC TECHNOLOGIES/HANGAR ONE AVIONICS

That the City Council authorize the City Manager to execute a sole source purchase contract with Airbus Helicopters, of Grand Prairie, Texas, in the amount of \$3,400,000 (includes sale tax) for the purchase of a new police helicopter (Model H125); and authorize the City Manager to execute a purchase agreement in the amount \$1,050,000 (includes sales tax) with CNC Technologies, of Ontario, California, for associated avionics equipment; and authorize the City Manager to execute a purchase agreement in the amount of \$1,000,000 (includes sales tax) with Hangar One Avionics, of Carlsbad, California, for the transfer and installation of the specialized avionics equipment; and authorize a \$50,000 contingency for the overall purchase and installation project.

PUBLIC HEARINGS

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

II. A PUBLIC HEARING TO CONSIDER FILE NOS. PHP17-013, PHP17-015, PHP17-016, PHP17-019, PHP17-022, AND PHP17-023, HISTORIC PROPERTY PRESERVATION AGREEMENTS FOR SIX DESIGNATED HISTORIC PROPERTIES

That the City Council adopt resolutions approving and authorizing the City Manager to enter into Historic Property Preservation Agreements (Mills Act contracts) for the following properties:

- (A) File No. PHP17-013, 206 West Armsley Square (APN: 1047-343-08),
- (B) File No. PHP17-015, 227 East G Street (APN: 1048-243-20),
- (C) File No. PHP17-016, 128 East El Morado Court (APN: 1048-242-03),
- (D) File No. PHP17-019, 318 East Princeton Street (APN: 1047-543-33),
- (E) File No. PHP17-022, 123 East H Street (APN: 1048-252-40), and
- (F) File No. PHP17-023, 205 East Princeton Street (APN: 1047-531-29).

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-013, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH JASON SMITH, SUSAN C. SMITH, KENNETH BAESKENS, AND ROBERTA BAESKENS, FOR THE PROPERTY LOCATED AT 206 WEST ARMSLEY SQUARE (APN: 1047-343-08).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-015, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH EELISHE TAYLOR AND GREGORY DEL FANTE, FOR THE PROPERTY LOCATED AT 227 EAST G STREET (APN: 1048-243-20).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-016, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH DANIEL AND JARED GARCIA, FOR THE PROPERTY LOCATED AT 128 EAST EL MORADO COURT (APN: 1048-242-03).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-019, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH MARK RIVAS, FOR THE PROPERTY LOCATED AT 318 EAST PRINCETON STREET (APN: 1047-543-33).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-022, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH ANGEL AND PAIGE HERNANDEZ, FOR THE PROPERTY LOCATED AT 123 EAST H STREET (APN: 1048-252-40).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-023, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH VINCENT POSTOVOIT AND ROSEMARY SALCES, FOR THE PROPERTY LOCATED AT 205 EAST PRINCETON STREET (APN: 1047-531-29).

12. A PUBLIC HEARING TO CONSIDER A RESOLUTION CERTIFYING THE ENVIRONMENTAL IMPACT REPORT, INCLUDING THE ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING PROGRAM, AND AN ORDINANCE FOR FILE NO. PSP15-002, A SPECIFIC PLAN (ARMSTRONG RANCH) REQUEST TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR 189.8 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 10-ACRE ELEMENTARY SCHOOL SITE. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, CUCAMONGA CREEK CHANNEL TO THE EAST, AND VINEYARD AVENUE TO THE WEST (APNS:0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45 0218-111-49 AND 0218-111-50)

That the City Council adopt a resolution approving the Environmental Impact Report prepared for File No. PSP15-002, including the adoption of a Statement of Overriding Considerations and the Mitigation Monitoring Program, and introduce and waive further reading of an ordinance approving the Armstrong Ranch Specific Plan (File No. PSP15-002).

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE ARMSTRONG RANCH SPECIFIC PLAN, FILE NO. PSP15-002, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING AND REPORTING PLAN (APNS: 218-101-01, 02, 03, 04, 05, 06, 07, 08, 218-102-10, 11, 218-111-04, 05, 06, 218-111-10, 11,12, 218-111-45 AND 218-111-49, 50).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ARMSTRONG RANCH SPECIFIC PLAN (FILE NO. PSP15-002), TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR 189.8 GROSS ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 11.6 GROSS ACRE ELEMENTARY SCHOOL. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, VINEYARD AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45, 0218-111-49 AND 0218-111-50.

13. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (APN:0218-201-18)

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA15-003, on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, to establish the terms and conditions for the development of Tentative Tract Map 18937 (File No. PMTT17-002).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-18.

14. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/TPM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE (APN: 0218-241-31)

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA17-001), on file with the Records Management Department, between the City of Ontario and Loyola Properties 1, LP, to establish the terms and conditions for the development of Tentative Parcel Map 19787 (File No. PMTT16-021).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT FILE NO. PDA17-001, BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/PM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-241-31.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

15. A RESOLUTION AUTHORIZING THE ISSUANCE OF MULTIFAMILY HOUSING BONDS AND APPROVING RELATED BOND DOCUMENTS FOR THE ACQUISITION AND REHABILITATION OF SEASONS AT ONTARIO SENIOR APARTMENTS, LOCATED AT 955 NORTH PALMETTO AVENUE; AND AN AGREEMENT FOR THE SECOND AMENDED GROUND LEASE, AND THE FIRST LOAN MODIFICATION AGREEMENT

That the following actions be taken by the respective bodies:

- (A) That the City Council approve a resolution authorizing the issuance of multifamily housing revenue bonds in an amount not to exceed \$8,000,000 for the purpose of financing the acquisition and rehabilitation of Seasons at Ontario Senior Apartments (“the Project”), approving and authorizing the execution and delivery of any and all documents (on file with the Records Management Department) necessary to issue the bonds and implement the resolution, and ratifying and approving any action heretofore taken in connection with the bonds; and
- (B) That the Ontario Housing Authority Board (Authority) approve a resolution for the Second Amended Ground Lease Agreement and the First Loan Modification Agreement (on file with the Records Management Department).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS RELATED TO THE FINANCING OF SEASONS AT ONTARIO APARTMENTS, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS, AND APPROVING ACTIONS IN CONNECTION THEREWITH.

RESOLUTION NO. OHA-_____

A RESOLUTION OF THE BOARD OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AGREEMENT WITH LINC ONTARIO APARTMENTS, LP, TO SECOND AMEND THE GROUND LEASE FOR THE SEASONS SENIOR AFFORDABLE HOUSING PROJECT.

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)
November 21, 2017

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 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION:
Briones v. City of Ontario, et al., U.S. District Court, Central District of California,
Case No. 5:17-cv-590 DMG

No Reportable Action	Continue	Approved
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Disposition: _____

**CITY OF ONTARIO
CLOSED SESSION REPORT**

City Council // Housing Authority // Other // (GC 54957.1)
November 21, 2017
(continued)

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

- **GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Property: 1156 W. Holt Blvd; 1150 W. Holt Blvd; 1134 & 1136 W. Holt Blvd; 1124 W. Holt Blvd; 1108 W. Holt Blvd; 1102 W. Holt Blvd; 115 N. Mountain Ave; 142 N. Mountain Ave; 122 N. Mountain Ave; 122 N. Mountain Ave; 122 N. Mountain Ave; 1050 W. Holt Blvd; 1050 W. Holt Blvd; 1020 W. Holt Blvd; 1034 W. Holt Blvd; 1201 W. Holt Blvd; 1151 W. Holt Blvd; 1141 W. Holt Blvd; 1125 W. Holt Blvd; 1113 W. Holt Blvd; 1065 W. Holt Blvd; 1051 W. Holt Blvd; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Larry James and Leticia Sarinana (1156 W. Holt Blvd.); John M. Culhane Trust (1150 W. Holt Blvd); Lorne and Angie Corradi (1134 & 1136 W. Holt Blvd); Lorne and Angie Corradi 1124 W. Holt Blvd; Rodolfo and Ana Elvira Gomez (1108 W. Holt Blvd); Henley Pacific SD LLC (1102 W. Holt Blvd); Walter and Janice Duong (115 N. Mountain Ave); TNS Family LLC (142 N. Mountain Ave); Rodolfo Medrano Jauregui (122 N. Mountain Ave); Rodolfo Medrano Jauregui (122 N. Mountain Ave); Rodolfo Medrano Jauregui (122 N. Mountain Ave); Guadalupe and Rodolfo Jauregui (1050 W. Holt Blvd); Guadalupe and Rodolfo Jauregui (1050 W. Holt Blvd); Ayad and Fatina Jaber (1020 W. Holt Blvd); Ayad and Fatina Jaber (1034 W. Holt Blvd); Riad and Tamer Bacily (1201 W. Holt Blvd); Tim and Donna Pfutzenreuter (1151 W. Holt Blvd); Holt Auto Center LLC (1141 W. Holt Blvd); Francisco Sandoval Jr. (1125 W. Holt Blvd); EMSET LLC (1113 W. Holt Blvd); G & M Gapco LLC (1065 W. Holt Blvd); Paint Bucket Inc. (1051 W. Holt Blvd); 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
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS


RECOMMENDATION: That the City Council adopt a resolution for recovery of fees and costs incurred in abating property and dangerous building violations, as well as administrative citations and civil penalties associated with property maintenance violations, and placing special assessments on the San Bernardino County Tax Rolls.

COUNCIL GOALS: Operate in a Businesslike Manner

FISCAL IMPACT: The levy of special assessments will result in the recovery of \$10,768 in costs that the City has expended for inspection or abatement of property violations, as well as the collection of \$14,690 associated with civil penalties and/or fines for continued violations, for a total of \$25,458 associated with 85 parcels. When received, reimbursement of \$14,904 will be made to the General Fund and \$10,554 to the Dangerous Building Fund.

BACKGROUND: The City has established revolving funds to cover City costs for abatement of property and dangerous building violations, as a result of code enforcement activities as well as the generation of fines associated with administrative citations for property maintenance violations and fees and penalties associated with the Systematic Health and Safety Inspection Program, Abandoned and Distressed Property Program and Weed and Refuse Abatement Program. These costs, fines, fees and penalties are recovered through placement of special tax assessments upon the properties. The placement of special assessments and collection of revenue is done under Ordinance 3046, Property Appearance (Title 5, Chapter 22 of the Ontario Municipal Code); Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings; Ordinance 2920 for civil penalties for continued violations of the Ontario Municipal Code and fines associated with administrative citations (Title 1, Chapters 2 and 5 of the Ontario Municipal Code). The City and County currently have a contractual agreement regarding implementation of special assessments; however, a resolution authorizing the placement of the specific assessments is required.

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

Prepared by: Erin Bonett
Department: Code Enforcement
City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

3

This assessment cycle, the Code Enforcement Department has billed property owners for the abatement of violations, the issuance of fines associated with administrative citations, the issuance of fees and penalties associated with the Systematic Health and Safety Inspection Program, the issuance of registration fees and civil penalties associated with the Abandoned and Distressed Property Program, and the issuance of notice and re-inspection fees as well as civil penalties for the Weed and Refuse Abatement Program on 872 parcels. Of this, there are remaining amounts due on 85 parcels. Attached are itemized accounts of: (1) costs associated with inspection or abatement as shown in Exhibit A of the resolution; (2) civil penalties and/or fines for continued violations as shown in Exhibit B of the resolution; and (3) total amounts per parcel as shown in Exhibit C of the resolution. The expenditure list, with any necessary corrections and adjustments, will be submitted to the County prior to August 2018 for its 2018-2019 tax rolls.

All affected property owners were given notice of the imposition of the special assessments via certified mail as provided in Ontario Municipal Code Section 1-4.05(a), and either have not requested an appeal or have exhausted the appellate procedure in Ontario Municipal Code Section 1-4.05(b).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

WHEREAS, Ordinance No. 3046, Property Appearance (Title 5, Chapter 22, of the Ontario Municipal Code) and Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings provide for the abatement of property nuisances by repair, rehabilitation, demolition or removal; and

WHEREAS, under Resolution 94-112, Resolution ORA-499, and the Cooperation and Reimbursement Agreement entered into on the 15th day of November, 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of One Hundred Fifty Thousand Dollars (\$150,000) to repair or abate dangerous buildings and properties throughout the City; and

WHEREAS, under a first amendment to the Cooperation and Reimbursement Agreement entered into on the 16th day of July 1996, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made an additional advance to the City of One Hundred Thousand Dollars (\$100,000) to continue to repair or abate dangerous buildings and properties throughout the City; and

WHEREAS, under Resolution 94-113, Resolution ORA-500, and the Cooperation and Reimbursement Agreement entered into on the 15th day of November 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of Thirty Thousand Dollars (\$30,000) to repair or abate dangerous buildings and properties in the 6th and Grove area; and

WHEREAS, under Resolution 94-12, Resolution ORA-464, and the Cooperation and Reimbursement Agreement entered into on the 22nd day of February 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of One Hundred Fifty Thousand Dollars (\$150,000) to repair or demolish dangerous buildings throughout the City; and

WHEREAS, Ordinance No. 2894, Systematic Health and Safety Inspection Program (Title 8, Chapter 17, of the Ontario Municipal Code), provides for the collection of unpaid service fees, plus any penalties and accrued interest by Special Assessment; and

WHEREAS, Ordinance No. 2920, provides for the assessment of civil penalties for continued violations of the Ontario Municipal Code (Title 1, Chapter 2 of the Ontario Municipal Code), and for fines associated with administrative citations to be collected by Special Assessment (Title 1, Chapter 5 of the Ontario Municipal Code), and establishes a uniform procedure before imposing such Special Assessments (Title 1, Chapter 4 of the Ontario Municipal Code); and

WHEREAS, the above said ordinances, resolutions and agreements provide for recovery of costs incurred in the abatement of violations by means of a Special Assessment placed on the tax rolls; and

WHEREAS, the City has incurred costs involved in the abatement of violations under the Ontario Municipal Code and Uniform Code for the Abatement of Dangerous Buildings, issuing Notices of Violation, and administering the Systematic Health and Safety Program and wishes to recover said costs; and

WHEREAS, the owners of all parcels listed in Exhibit A, B, and C were given notice of imposition of such Special Assessment as provided in Ontario Municipal Code Section 1-4.05(a), and either have not requested an appeal, or have exhausted the appellate procedure provided in Ontario Municipal Code Section 1-4.05(b); and

WHEREAS, the City has an executed contract with the San Bernardino County Board of Supervisors for collection of said assessments;

NOW, THEREFORE, BE IT RESOLVED that the City Council:

1. Confirmed the costs associated with inspection or abatement on the properties as set forth in the report in Exhibit A; and
2. Confirmed the civil penalties and/or fines for continued violations on the properties as set forth in the report in Exhibit B; and
3. Confirmed that Exhibit C contains the total amount assessed for both confirmed costs and confirmed civil penalties and/or fines for each of the properties; and
4. Found and determined that the report, and Exhibits contained therein are true and accurate; and
5. Adopts the above said report and finds that the costs of inspection or abatement on the properties listed are the costs set forth in Exhibit A, the civil penalties and/or fines for continued violations are the penalties and/or fines as set forth in Exhibit B, and the same are hereby charged and placed as special assessments upon the respective properties; and
6. Directs Exhibit C shall be sent to the Auditor-Controller of San Bernardino County and shall be collected on the County tax roll.

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

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

City of Ontario
Code Enforcement Department
2018/2019 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
0108-532-04	1664 E FIFTH ST, Ontario, CA 91764	371.05
0110-061-01	1375 E HOLT BL, Ontario, CA 91761	550.00
0110-071-02	1389 E HOLT BL, Ontario, CA 91761	50.00
0110-111-12	1660 E HOLT BL, Ontario, CA 91761	50.00
0110-131-19	1264 E HOLT BL, Ontario, CA 91761	550.00
0110-381-03	1862 E GRANADA CT, Ontario, CA 91764	15.49
0113-533-12	2532 S BALBOA AV, Ontario, CA 91761	62.10
0113-571-49	2615 S QUAKER RIDGE PL, Ontario, CA 91761	1,619.14
0209-422-53	1814 N VINEYARD AV, Unit:G, Ontario, CA 91764	14.61
0211-232-38	0 S MILLIKEN AV, Ontario, CA 91761	550.00
0211-263-32	0 S HAVEN AV, Ontario, CA 91761	550.00
0211-263-38	0 S METRO WY, Ontario, CA 91761	550.00
0211-263-39	0 E FRANCIS ST, Ontario, CA 91761	550.00
0211-263-40	0 S EXCISE AV, Ontario, CA 91761	550.00
0216-173-01	0 S WALKER AV, Ontario, CA 91761	611.60
1010-131-38	1265 W FOURTH ST, Ontario, CA 91762	47.07
1010-491-09	833 W B ST, Ontario, CA 91762	15.53
1010-521-05	312 N CAMELLIA AV, Unit:A, Ontario, CA 91762	155.26
1011-541-15	1121 W BAHIA CT, Unit:A, Ontario, CA 91762	46.58
1011-544-07	1138 W RALSTON ST, Ontario, CA 91762	62.10
1014-172-01	863 W MAPLE ST, Ontario, CA 91762	62.10
1047-151-07	1152 E SEVENTH ST, Ontario, CA 91764	166.75
1047-433-11	1202 E SIXTH ST, Ontario, CA 91764	61.95
1048-134-04	1068 E J ST, Ontario, CA 91764	61.95
1048-161-09	752 N PARKSIDE AV, Ontario, CA 91764	15.49
1048-365-05	218 E F ST, Ontario, CA 91764	30.98
1048-391-04	555 E E ST, Ontario, CA 91764	30.98
1048-451-09	519 N GROVE AV, Ontario, CA 91764	110.00
1048-571-05	405 W D ST, Unit:A, Ontario, CA 91762	58.84
1049-021-09	549 W HOLT BL, Ontario, CA 91762	550.00
1049-131-04	918 E HOLT BL, Ontario, CA 91761	110.00
1049-141-24	1194 E HOLT BL, Ontario, CA 91761	110.00
1049-194-21	1037 E WASHINGTON ST, Ontario, CA 91761	110.00
1049-261-11	400 W NEVADA ST, Ontario, CA 91762	46.46
1049-271-15	419 S VINE AV, Ontario, CA 91762	550.00
1049-291-26	650 W NEVADA ST, Ontario, CA 91762	30.98
1049-353-14	901 S SULTANA AV, Building:1, Ontario, CA 91761	110.00
1049-431-16	1050 E BELMONT ST, Ontario, CA 91761	110.00
1049-491-02	532 E BELMONT ST, Ontario, CA 91761	110.00
1049-491-03	544 E BELMONT ST, Ontario, CA 91761	110.00
1049-502-04	618 E MAITLAND ST, Ontario, CA 91761	660.00
1049-502-13	1030 S CAMPUS AV, Ontario, CA 91761	30.98
1049-581-17	1030 S SAN ANTONIO AV, Ontario, CA 91762	139.73
1050-101-23	630 E DE ANZA ST, Ontario, CA 91761	46.05

City of Ontario
Code Enforcement Department
2018/2019 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
1050-284-01	1714 S EUCLID AV, Building:1, Ontario, CA 91762	110.00
1050-284-01	1714 S EUCLID AV, Building:1, Ontario, CA 91762	50.00
1050-542-84	731 E BOXWOOD CT, Ontario, CA 91761	15.49
1051-121-39	2247 S HOPE PL, Ontario, CA 91761	11.48
1083-041-41	2834 S SEA ISLAND TR, Ontario, CA 91761	77.63
1083-321-01	2249 S HAVEN AV, Building:11, Ontario, CA 91761	110.00
		10,768.37

City of Ontario
Code Enforcement Department
2018/2019 Tax Roll Year Special Assessments
Exhibit B - Civil Penalties and/or Fines for Continued Violations

Parcel Number	Address	Amount Due
0108-493-37	1521 N MARIPOSA AV, Ontario, CA 91764	220.00
0108-541-04	1205 N CORONA AV, Ontario, CA 91764	520.00
0108-541-18	1647 E PRINCETON ST, Ontario, CA 91764	340.00
0110-071-02	1389 E HOLT BL, Ontario, CA 91761	500.00
0110-111-12	1660 E HOLT BL, Ontario, CA 91761	500.00
0113-501-01	2812 S DIVERSA DR, Ontario, CA 91761	760.00
0113-502-06	2840 S DIVERSA DR, Ontario, CA 91761	420.00
0210-292-22	1729 E HAWTHORNE ST, Ontario, CA 91764	760.00
0216-391-24	2620 S WALKER AV, Ontario, CA 91761	420.00
1010-423-18	1549 W E ST, Ontario, CA 91762	420.00
1010-441-06	1236 W F ST, Ontario, CA 91762	120.00
1010-481-08	823 W G ST, Ontario, CA 91762	120.00
1010-521-30	151 N MOUNTAIN AV, Ontario, CA 91762	760.00
1014-152-10	1487 S GRANITE AV, Ontario, CA 91762	520.00
1047-143-01	0 E EIGHTH ST, Ontario, CA 91764	550.00
1047-281-33	1528 N BEVERLY CT, Ontario, CA 91762	120.00
1047-382-66	561 E LA DENEY DR, Ontario, CA 91764	120.00
1048-213-18	739 E H ST, Ontario, CA 91764	170.00
1048-354-10	413 N EUCLID AV, Building:1, Ontario, CA 91762	120.00
1048-381-04	526 E G ST, Ontario, CA 91764	490.00
1049-057-05	112 S EUCLID AV, Building:1, Ontario, CA 91762	840.00
1049-203-01	0 S TAYLOR AV, Ontario, CA 91761	760.00
1049-203-01	0 S TAYLOR AV, Ontario, CA 91761	20.00
1049-203-02	0 S TAYLOR AV, Ontario, CA 91761	760.00
1049-203-03	0 S TAYLOR AV, Ontario, CA 91761	740.00
1049-291-21	626 W NEVADA ST, Ontario, CA 91762	320.00
1049-292-11	613 W NEVADA ST, Ontario, CA 91762	120.00
1049-431-10	1211 S BON VIEW AV, Ontario, CA 91761	760.00
1050-093-05	1543 S MONTEREY AV, Ontario, CA 91761	100.00
1050-284-01	1714 S EUCLID AV, Building:1, Ontario, CA 91762	500.00
1050-341-16	624 W CEDAR ST, Ontario, CA 91762	220.00
1051-221-16	125 W GEYER CT, Ontario, CA 91762	550.00
1051-321-26	2533 S RAYMOND PL, Ontario, CA 91761	220.00
1051-331-17	2638 S PARKSIDE DR, Ontario, CA 91761	120.00
1053-361-01	7721 E EDISON AV, Ontario, CA 91710	420.00
1083-201-44	2835 S CYPRESS POINT DR, Ontario, CA 91761	120.00
1083-211-01	2961 S ARCHIBALD AV, Building:1, Ontario, CA 91761	170.00
		14,690.00

City of Ontario
Code Enforcement Department
2018/2019 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
0108-493-37	1521 N MARIPOSA AV, Ontario, CA 91764	220.00
0108-532-04	1664 E FIFTH ST, Ontario, CA 91764	371.05
0108-541-04	1205 N CORONA AV, Ontario, CA 91764	520.00
0108-541-18	1647 E PRINCETON ST, Ontario, CA 91764	340.00
0110-061-01	1375 E HOLT BL, Ontario, CA 91761	550.00
0110-071-02	1389 E HOLT BL, Ontario, CA 91761	550.00
0110-111-12	1660 E HOLT BL, Ontario, CA 91761	550.00
0110-131-19	1264 E HOLT BL, Ontario, CA 91761	550.00
0110-381-03	1862 E GRANADA CT, Ontario, CA 91764	15.49
0113-501-01	2812 S DIVERSA DR, Ontario, CA 91761	760.00
0113-502-06	2840 S DIVERSA DR, Ontario, CA 91761	420.00
0113-533-12	2532 S BALBOA AV, Ontario, CA 91761	62.10
0113-571-49	2615 S QUAKER RIDGE PL, Ontario, CA 91761	1,619.14
0209-422-53	1814 N VINEYARD AV, Unit:G, Ontario, CA 91764	14.61
0210-292-22	1729 E HAWTHORNE ST, Ontario, CA 91764	760.00
0211-232-38	0 S MILLIKEN AV, Ontario, CA 91761	550.00
0211-263-32	0 S HAVEN AV, Ontario, CA 91761	550.00
0211-263-38	0 S METRO WY, Ontario, CA 91761	550.00
0211-263-39	0 E FRANCIS ST, Ontario, CA 91761	550.00
0211-263-40	0 S EXCISE AV, Ontario, CA 91761	550.00
0216-173-01	0 S WALKER AV, Ontario, CA 91761	611.60
0216-391-24	2620 S WALKER AV, Ontario, CA 91761	420.00
1010-131-38	1265 W FOURTH ST, Ontario, CA 91762	47.07
1010-423-18	1549 W E ST, Ontario, CA 91762	420.00
1010-441-06	1236 W F ST, Ontario, CA 91762	120.00
1010-481-08	823 W G ST, Ontario, CA 91762	120.00
1010-491-09	833 W B ST, Ontario, CA 91762	15.53
1010-521-05	312 N CAMELLIA AV, Unit:A, Ontario, CA 91762	155.26
1010-521-30	151 N MOUNTAIN AV, Ontario, CA 91762	760.00
1011-541-15	1121 W BAHIA CT, Unit:A, Ontario, CA 91762	46.58
1011-544-07	1138 W RALSTON ST, Ontario, CA 91762	62.10
1014-152-10	1487 S GRANITE AV, Ontario, CA 91762	520.00
1014-172-01	863 W MAPLE ST, Ontario, CA 91762	62.10
1047-143-01	0 E EIGHTH ST, Ontario, CA 91764	550.00
1047-151-07	1152 E SEVENTH ST, Ontario, CA 91764	166.75
1047-281-33	1528 N BEVERLY CT, Ontario, CA 91762	120.00
1047-382-66	561 E LA DENEY DR, Ontario, CA 91764	120.00
1047-433-11	1202 E SIXTH ST, Ontario, CA 91764	61.95
1048-134-04	1068 E J ST, Ontario, CA 91764	61.95
1048-161-09	752 N PARKSIDE AV, Ontario, CA 91764	15.49
1048-213-18	739 E H ST, Ontario, CA 91764	170.00
1048-354-10	413 N EUCLID AV, Building:1, Ontario, CA 91762	120.00
1048-365-05	218 E F ST, Ontario, CA 91764	30.98
1048-381-04	526 E G ST, Ontario, CA 91764	490.00

City of Ontario
Code Enforcement Department
2018/2019 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
1048-391-04	555 E E ST, Ontario, CA 91764	30.98
1048-451-09	519 N GROVE AV, Ontario, CA 91764	110.00
1048-571-05	405 W D ST, Unit:A, Ontario, CA 91762	58.84
1049-021-09	549 W HOLT BL, Ontario, CA 91762	550.00
1049-057-05	112 S EUCLID AV, Building:1, Ontario, CA 91762	840.00
1049-131-04	918 E HOLT BL, Ontario, CA 91761	110.00
1049-141-24	1194 E HOLT BL, Ontario, CA 91761	110.00
1049-194-21	1037 E WASHINGTON ST, Ontario, CA 91761	110.00
1049-203-01	0 S TAYLOR AV, Ontario, CA 91761	760.00
1049-203-01	0 S TAYLOR AV, Ontario, CA 91761	20.00
1049-203-02	0 S TAYLOR AV, Ontario, CA 91761	760.00
1049-203-03	0 S TAYLOR AV, Ontario, CA 91761	740.00
1049-261-11	400 W NEVADA ST, Ontario, CA 91762	46.46
1049-271-15	419 S VINE AV, Ontario, CA 91762	550.00
1049-291-21	626 W NEVADA ST, Ontario, CA 91762	320.00
1049-291-26	650 W NEVADA ST, Ontario, CA 91762	30.98
1049-292-11	613 W NEVADA ST, Ontario, CA 91762	120.00
1049-353-14	901 S SULTANA AV, Building:1, Ontario, CA 91761	110.00
1049-431-10	1211 S BON VIEW AV, Ontario, CA 91761	760.00
1049-431-16	1050 E BELMONT ST, Ontario, CA 91761	110.00
1049-491-02	532 E BELMONT ST, Ontario, CA 91761	110.00
1049-491-03	544 E BELMONT ST, Ontario, CA 91761	110.00
1049-502-04	618 E MAITLAND ST, Ontario, CA 91761	660.00
1049-502-13	1030 S CAMPUS AV, Ontario, CA 91761	30.98
1049-581-17	1030 S SAN ANTONIO AV, Ontario, CA 91762	139.73
1050-093-05	1543 S MONTEREY AV, Ontario, CA 91761	100.00
1050-101-23	630 E DE ANZA ST, Ontario, CA 91761	46.05
1050-284-01	1714 S EUCLID AV, Building:1, Ontario, CA 91762	110.00
1050-284-01	1714 S EUCLID AV, Building:1, Ontario, CA 91762	50.00
1050-284-01	1714 S EUCLID AV, Building:1, Ontario, CA 91762	500.00
1050-341-16	624 W CEDAR ST, Ontario, CA 91762	220.00
1050-542-84	731 E BOXWOOD CT, Ontario, CA 91761	15.49
1051-121-39	2247 S HOPE PL, Ontario, CA 91761	11.48
1051-221-16	125 W GEYER CT, Ontario, CA 91762	550.00
1051-321-26	2533 S RAYMOND PL, Ontario, CA 91761	220.00
1051-331-17	2638 S PARKSIDE DR, Ontario, CA 91761	120.00
1053-361-01	7721 E EDISON AV, Ontario, CA 91710	420.00
1083-041-41	2834 S SEA ISLAND TR, Ontario, CA 91761	77.63
1083-201-44	2835 S CYPRESS POINT DR, Ontario, CA 91761	120.00
1083-211-01	2961 S ARCHIBALD AV, Building:1, Ontario, CA 91761	170.00
1083-321-01	2249 S HAVEN AV, Building:11, Ontario, CA 91761	110.00

25,458.37

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL STRUCTURAL PLAN CHECKING AND INSPECTION SERVICES

RECOMMENDATION: That the City Council approve Professional Services Agreements (on file in the Records Management Department) with McLean & Schultz, Inc. of Brea, California, and Danken, Inc. of Ladera Ranch, California, to provide professional engineering structural plan check and inspection services; and authorize the City Manager to execute the contracts and to extend the agreements for up to four (4) additional one (1) year periods at the City's discretion, consistent with future budgets approved by the City Council.

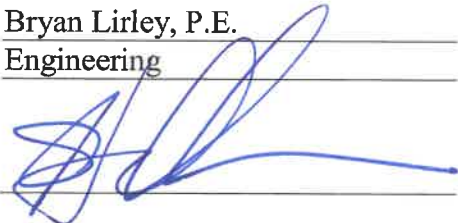
COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner

FISCAL IMPACT: There is no net impact to the General Fund. Both consultants will be paid from fees collected from applicants for plan check and inspection services, on an as needed basis. The adopted budget for Fiscal Year 2017-18 allocated \$800,000 for such professional engineering services. Additional appropriations may be requested in future quarterly budget reports depending on the volume and extent of projects submitted by applicants that require structural plan check review or inspection services.

BACKGROUND: The City provides in-house plan checking and inspection services for the majority of projects. However, due to the volume of projects as well as the complex bridge and drainage improvement projects anticipated to be submitted in the near future, specialized structural plan check and inspection services will be needed to supplement the City's in-house plan checking and inspection staff.

The City solicited proposals from qualified firms; and responses from the following were evaluated:

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

Prepared by: Bryan Lirley, P.E.
Department: Engineering
City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

4

COMPANY	LOCATION
Harris and Associates	Irvine, CA
McLean and Schultz	Brea, CA
Danken	Ladera Ranch, CA

Using a quality based selection process, a panel of City staff reviewed the proposals; and McLean & Schultz and Danken were judged to be the most qualified firms. As such, they are being recommended based on their broad range of expertise as demonstrated by their services provided to municipal agencies and capability to perform the work in a timely manner.

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: FISCAL YEAR 2017-18 FIRST BUDGET UPDATE REPORT

RECOMMENDATION: That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2017-18 First Budget Update Report.

COUNCIL GOALS: Operate in a Businesslike Manner

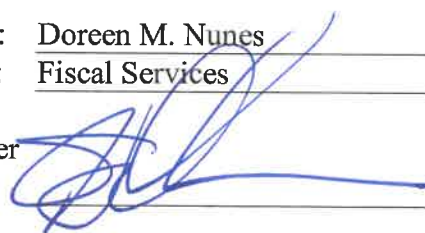
FISCAL IMPACT: The recommended actions will affect several fund budgets as outlined in the Fiscal Year 2017-18 First Budget Update Report and supporting schedules.

BACKGROUND: This first budget update report for Fiscal Year 2017-18 reflects the Administrative Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achieve their core goals. All funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds the majority of government services including public safety, recreation, library, museum, parks, building, and planning. This report also discusses prior year results, budget trends, and the economic outlook that may impact the City's resources.

The primary purposes of this report are to:

- Provide a reconciliation of budgeted-to-actual financial data from the prior fiscal year;
- Address annual carryforward appropriations across all funds;
- Recognize budgetary carryforward amounts for prior year approved Capital Improvement Projects and Grant appropriations, which are ongoing;
- Revise the City's budget to reflect the City Council's actions taken since the beginning of the current fiscal year;
- Recommend personnel and organizational changes to enhance program operations and efficiency;
- Recommend budget adjustments that are consistent with City Council goals and objectives; and
- Comment on significant budget and economic trends which may impact fiscal year's budget development.

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. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

5

Fiscal Year 2016-17 Results

The General Fund activity for the year resulted in a deficit balance of \$279,918, due to the absorption of unbillable costs per FAA regulations for providing law enforcement and fire suppression services at the Ontario International Airport (ONT). This scenario could continue for the next few years at an estimated amount of \$3.5 million annually. For Fiscal Year 2016-17, the absorption amount was \$6.0 million, primarily the result of initial start-up costs, restrictions on recouping capital outlay expenditures, and Los Angeles World Airport (LAWA) transition expenses Ontario International Airport Authority (OIAA) is responsible for.

First Budget Update Recommendations

First Budget Update recommendations are routine in nature and comprised predominately by City Council actions taken since the beginning of the fiscal year, encumbrance carryforward items to rollover purchase orders that have not yet been expended, and Capital Improvement Program (CIP) carryforward items to rollover budget from approved projects that have not yet been completed. For the General Fund, these actions will bring the General Fund estimated available ending fund balance to \$47,979,802; this amount achieves the 18% goal set by City Council.

Major items proposed for the First Budget Update in the General Fund are: \$5.5 million for replacement of an existing police helicopter (funded through a \$4.5 million transfer from the Public Safety Equipment Reserve and an estimated \$1 million for the sale of the existing helicopter); \$4.5 million for sales tax abatement disclosure requirement per new governmental accounting standards (offset with a corresponding increase in sales tax revenues); \$1.5 million for the alternatives analysis for the Gold Line Rail extension from Montclair to ONT; and \$270,000 for five additional police vehicles for use in the canine, background investigations and forensics divisions.

Noteworthy budget adjustments in Other Funds include: \$1.5 million for installation of sidewalk at Sultana Elementary and De Anza Middle Schools (funded through a \$1.3 million 2016 Safe Routes to School Program Grant and City matching amount of \$228,000 from available Gas Tax fund balance); appropriation of \$1,335,000 for replacement of four refuse vehicles that were damaged from a recent fire at the City's Municipal Services Center; additional budget of \$906,538 for right-of-way acquisition costs associated with the freeway interchange improvements at the 60 Freeway and Archibald Avenue; \$765,000 grant award from the California Office of Traffic Safety to provide funding for police overtime, education, training and equipment related to special traffic enforcements; \$759,185 additional appropriation for the Police Headquarters Renovation Project (funded from the Communication/Computer Dispatch Reserve); additional budget of \$550,000 for liability settlement claims; and \$457,210 allocation toward the Citizens Business Bank Arena for a new freeway marquee, construction of a patio on the north side, retrofit ice maker, and other capital equipment replacement (funding provided from the Event Center Capital Equipment Reserve).

Interim budget updates also present recommendations for personnel and organizational changes necessary to enhance program operations and efficiency. Current recommendations include organizational changes to the Police Department, Development, City Administration, and Administrative Services agencies. The proposed recommendations will result in a net increase of 1 position and an overall General Fund annual increase of \$160,011 (across all funds the increase is \$156,995). This is primarily the result of the proposed addition of one police officer in the Police Department's canine program, and organizational changes in the Development and City Administration agencies. The proposed personnel changes in the Administrative Services agency results in a net zero impact.

Economic Outlook

The local economy is continuing to show signs of growth, with consumer confidence at high levels, combined with healthy gains in employment and home values. Consumers continue to be optimistic for the future, as reflected in the strong Consumer Confidence Index of 125.9 for October 2017; this at the highest levels since December 2000. Gross Domestic Product (GDP), the broadest measure of economic output, increased significantly at 3 percent for the third quarter of 2017. This is a major gain compared to the minimal increase of 0.7 percent reported for the first quarter of the year. In addition, the national labor market continues to create enough jobs to keep up with the population and labor force growth; these job gains are reflected in a steady unemployment rate experienced in the State of California and locally in the Inland Empire region.

Home Values are improving as demonstrated by the strong gain of 7.5 percent compared to the prior year in the median sale price of single-family homes in the Inland Empire for September 2017. This increase in home values is mainly the result of home buyers being pushed out of the Los Angeles and Orange County housing markets due to the higher home prices in those regions. However, home sales declined slightly at 4 percent due to the reduced availability of homes for sale and more renters deciding to stay where they are at than purchase a home.

Sales tax revenue for the second quarter 2016 declined at 4.1 percent compared to the same quarter a year ago, primarily the result of the loss of a major sales tax producer in the City and the slowing of vehicle sales. Although the City experienced a decrease in sales tax revenue growth, the reduction is much smaller than the discouraging decline of 16.8 percent for the first quarter 2016. The weakening sales tax revenue appears to be leveling off, however, this trend of reduced or flat growth of sales tax revenue may continue through 2018.

CalPERS

The California State Public Employees Retirement System (CalPERS) is considerably underfunded, primarily due to the lower than projected earning rates combined with significant investment losses incurred during the Great Recession. All of this has contributed to dramatic increases to the City's CalPERS contribution rates. With the recent adoption of amortization and smoothing policy changes by the CalPERS Board to address the severity of the underfunding, significant employer contribution rate increases have already begun. CalPERS' proposed rates will increase by approximately 80 percent by Fiscal Year 2022-23.

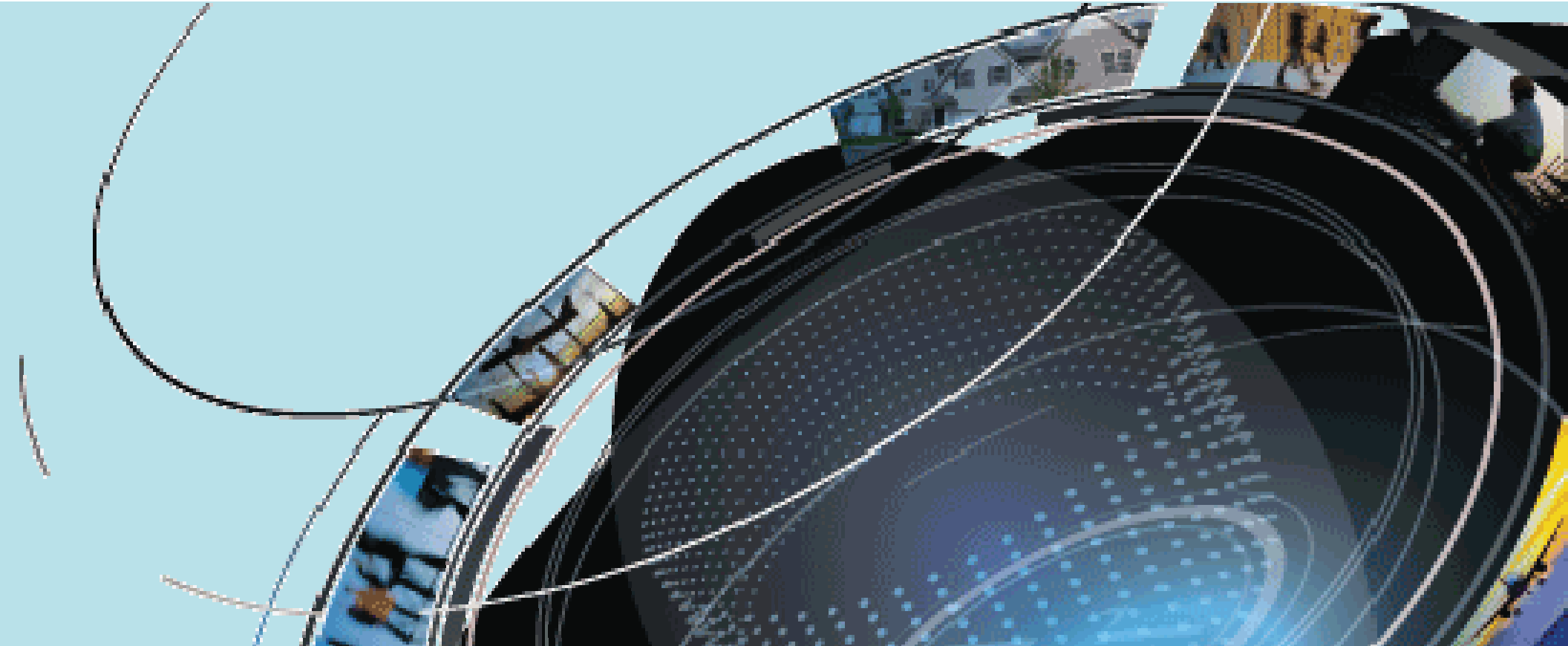
The CalPERS Board approved in December 2016 lowering the discount rate assumption, the long-term rate of return, from 7.5 percent to 7.0 percent over the next three years. This will increase employer contribution costs by approximately \$4.9 million to the City's General Fund beginning in Fiscal Year 2018-19 and, by Fiscal Year 2022-23, the increase is \$21.0 million. The City's CalPERS pension expense will increase an average of 12.5 percent over the next five years, while the projected General Fund revenue growth will only be approximately 4.0 percent. Without future major revenue growth and limits on expenditures, the City will be facing a significant constraint on operating budgets in upcoming fiscal years.

Conclusion

The overall economy is projected to grow moderately over the next couple of years due to continued stagnant wage growth, the potential negative impact to the domestic economy resulting from the unstable global economic landscape, the Federal Reserve's current actions to taper back its bond purchases (quantitative easing), which has kept borrowing costs low. In addition, Ontario needs to be cognizant of a potential decline or flat growth in sales tax revenues for calendar years 2017 and 2018 due to the relocation of a major sales tax generator out of the City and the slowing of auto sales. This is only partially offset by new business attraction, as the City continues its dynamic economic development strategies to

bring new businesses and jobs to Ontario. The City will also be experiencing rapidly increasing pension expenses that will far-out-pace the growth in revenue in the forthcoming fiscal years. Other major challenges the City continues to contend with locally are the rapidly rising cost of medical benefits for active employees and the unfunded liabilities for retiree medical benefits. Also, the City should be mindful that in providing services to OIAA, there is an absorption cost factor to consider. In order for the City to successfully manage these significant budget issues, it is recommended that Ontario practice fiscal discipline and establish proactive measures to safely navigate these upcoming fiscal challenges.

The Adopted Operating Budget for Fiscal Year 2017-18, as modified through this First Budget Update, reflects the City Council's continued commitment to foster steady, controlled growth and to provide the highest level of service to the community within the City's fiscal constraints. With the City Council's leadership and their prudent fiscal policies, the City's long-term fiscal health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.



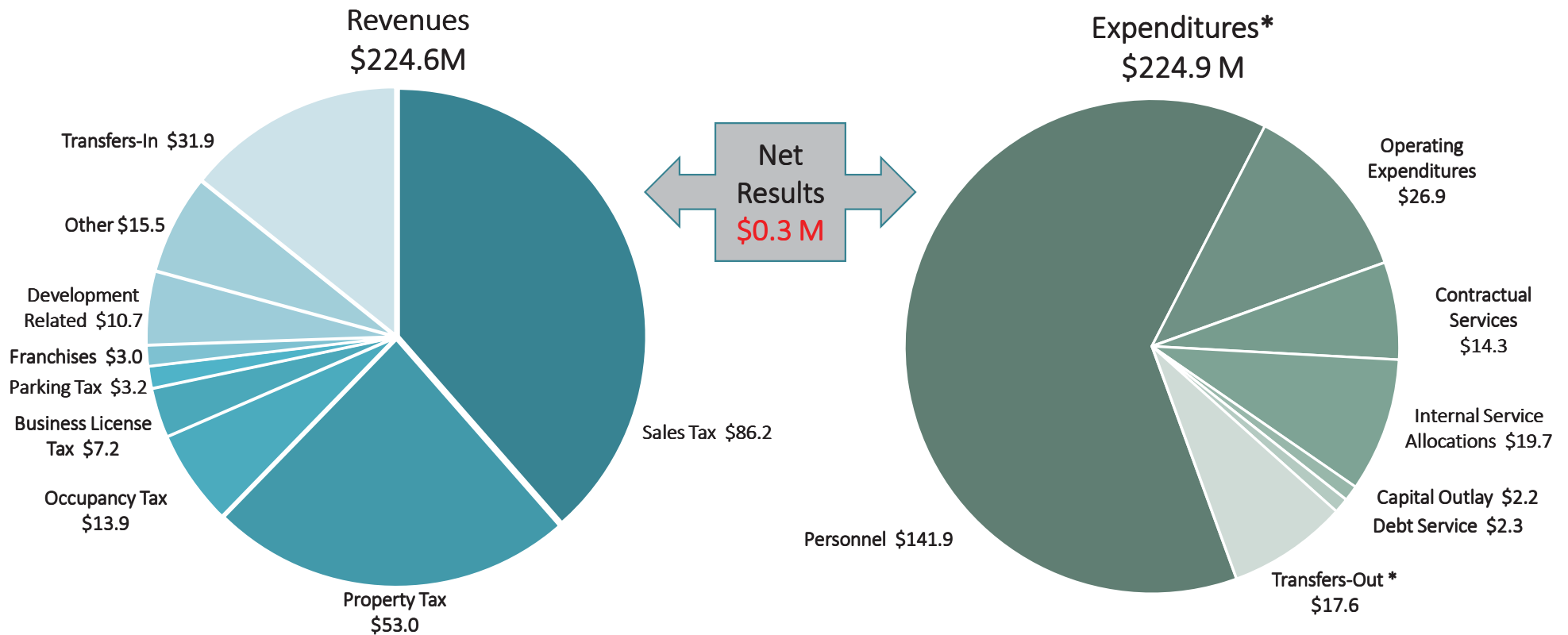
Fiscal Year 2017-2018
FIRST BUDGET UPDATE REPORT

ONTARIO

November 21, 2017

Administrative Services/Fiscal Services

FY 2016-17 General Fund Results



*Expenditures include \$3.25m of carryforward encumbrances.

** Transfers-out exclude prior year allocation of surplus of \$10.5m and \$3.7m to IT Fund and City Facilities Reserve, respectively.

Economic Outlook



Strongest two quarters of growth since 2014

Third Qtr 2017
3.0% Annual Rate ▲



September 2017
U.S. 4.2 ▼
CA 5.1 ←
Riverside-S.B.-Ontario 5.4 ▼



October 2017
125.9 ▲



Manufacturing
Purchasing Managers'
Index (PMI)

October 2017
U.S. 58.7% ▼
I.E. 54.8% ▼

September-17 State/Region/County	Median Sold Price of Existing Single-Family Homes			Sales			
	Sep-17	Aug-17	Sep-16	Price MTM% Chg	Price YTY% Chg	MTM% Chg	YTY% Chg
CA SFH (SAAR)	\$555,410	\$565,330	\$516,450	-1.8%	7.5%	2.2%	1.7%
CA Condo/Townhomes	\$450,400	\$446,760	\$415,540	0.8%	8.4%	-13.4%	-4.2%
Los Angeles Metropolitan Area	\$504,990	\$499,970	\$463,600	1.0%	8.9%	-8.8%	-2.5%
Inland Empire	\$343,260	\$341,340	\$319,380	0.6%	7.5%	-13.0%	-4.0%
S.F. Bay Area	\$852,230	\$856,200	\$762,810	-0.5%	11.7%	-14.2%	-4.2%
Southern California							
Los Angeles	\$606,110	\$570,720	\$550,700	6.2%	10.1%	-4.6%	-4.1%
Orange	\$799,000	\$789,000	\$739,000	1.3%	8.1%	-7.9%	4.1%
Riverside	\$385,700	\$388,500	\$352,250	-0.7%	9.5%	-13.7%	-9.2%
San Bernardino	\$279,000	\$269,950	\$251,750	3.4%	10.8%	-12.1%	4.4%
San Diego	\$605,000	\$605,000	\$569,000	0.0%	6.3%	-16.7%	-4.3%
Ventura	\$609,000	\$640,000	\$583,800	-4.8%	4.3%	-11.6%	0.0%

Source: California Association of Realtors

The manufacturing sector registered a slight decrease from the prior month; however, it is the 14th and 10th consecutive month in the U.S. and I.E., respectively, above 50% which indicates manufacturing remains in growth mode. Economist forecast a growth for all of 2017 at 2.1% and 2.5% for 2018. Although, the economy is expected to slowdown by 2019 with the anticipated interest rate increases by the Federal Reserve by 2019.

FY 2017-18 General Fund

First Budget Update

See Schedules I-VI

Total Revenue Adopted Budget*	\$228,677,218
<u>Revenue Adjustments</u>	
Sales Tax	4,500,000
Other & Transfers-In	<u>5,555,000</u>
Revised Revenue Budget	<u>\$238,732,218</u>
Total Expenditure Adopted Budget*	\$228,677,218
<u>Expenditure Adjustments</u>	
Public Safety	6,047,426
Economic Development	4,525,503
Development	1,501,896
Community Services & Recreation	53,863
Municipal Services	16,110
FY 2016-17 Carryforward Encumbrances	<u>3,250,438</u>
Revised Expenditure Budget	<u>\$244,072,454</u>

*Includes transfer-ins and outs.

Citywide Budget By Fund FY 2017-18

	Adopted Budget (including Transfers-out)	First Budget Update Recommendations	Revised Budget
General Fund	\$ 228.7 M	\$ 15.4 M	\$ 244.1 M
Special Revenue	25.1	44.2	69.3
Capital Projects	32.1	50.0	82.1
Enterprise	179.2	62.7	241.9
Internal Service	45.9	8.4	54.3
Fiduciary	5.8	5.7	11.5
Total	\$ 516.8 M	\$ 186.4 M	\$ 703.2 M

See Schedule VI

ADDITIONS

- Senior Financial Analyst (1)
- Accountant (1)
- Principal Planner (1)
- Police Officer (1)
- Risk/Safety Manager (1)
- Risk Management Coordinator (1)

DELETIONS

- Financial Analyst (1)
- Payroll Analyst (1)
- Principal Engineer (1)
- Risk Management Director (1)
- Risk Management Technician (1)

RECLASSIFICATIONS

- Human Resources Director to Human Resources/Risk Management Director

FY 2017-18
First Budget Update
Personnel Changes

See Schedule VII

SCHEDULE I

**City of Ontario
Summary of General Fund Recommended Revenue Adjustments
Fiscal Year 2017-18
First Budget Update**

Revenue Source	Adopted Budget	Current Budget	Recommended First Budget Update Adjustments	Current Budget After Adjustments	Actuals As of 11/10/2017	Percent of Budget Received
Sales Tax	\$ 76,250,000	\$ 76,250,000	\$ 4,500,000	\$ 80,750,000	\$ 13,815,377	17.1%
Business License Tax	6,800,000	6,800,000	-	6,800,000	253,079	3.7%
Occupancy Tax	12,875,000	12,875,000	-	12,875,000	3,649,125	28.3%
Parking Tax	2,900,000	2,900,000	-	2,900,000	782,700	27.0%
Franchises	3,150,000	3,150,000	-	3,150,000	-	0.0%
Property Tax	52,000,000	52,000,000	-	52,000,000	-	0.0%
Development Related	7,695,000	7,695,000	-	7,695,000	3,594,097	46.7%
Recreation Programs	938,000	938,000	-	938,000	366,695	39.1%
Interest & Rentals	2,325,000	2,325,000	-	2,325,000	-	0.0%
Miscellaneous Revenues	19,907,525	19,907,525	1,000,000	20,907,525	3,865,894	18.5%
Total Recurring Revenues	\$ 184,840,525	\$ 184,840,525	\$ 5,500,000	\$ 190,340,525	\$ 26,326,967	13.8%
Reimbursables	<u>4,608,275</u>	<u>4,608,275</u>	<u>55,000</u>	<u>4,663,275</u>	<u>1,632,151</u>	35.0%
Total General Fund Revenue	<u>\$ 189,448,800</u>	<u>\$ 189,448,800</u>	<u>\$ 5,555,000</u>	<u>\$ 195,003,800</u>	<u>\$ 27,959,118</u>	14.3%

SCHEDULE II

**City of Ontario
 Summary of General Fund Recommended Expenditure Adjustments
 Fiscal Year 2017-18
 First Budget Update**

	Expenditures
Adopted Budget	\$ 220,358,706
Current Budget	\$ 220,358,706
Recommended Adjustments:	
Police helicopter (offset with \$1 million sale of existing helicopter)	5,500,000
Sales tax abatement disclosure requirement GASB 77 (offset with Sales Tax Revenue)	4,500,000
Gold Line extension to Ontario International Airport alternatives analysis <i>(CC Apprvd 8/15/2017)</i>	1,500,000
Additional Police vehicles (5): canine/background investigators/forensics	270,000
Airport Police Dispatch video security monitors (10)	92,650
Tree replacements and landscape retrofit at Homer Briggs Park	53,863
Fire training materials and travel (Offset by Cal-JAC reimbursement)	50,000
Police canine and handler training and equipment	39,000
Landscape maintenance services at former Redevelopment properties and sites <i>(CC Apprvd 6/20/2017)</i>	25,503
Animal control contract services	16,110
FY 2016-17 Carryforward Encumbrances	3,250,438
Recommended personnel changes	93,340
Temporary/Part Time Salaries for Administrative Services/Fiscal Services	4,332
Total Recommended Adjustments	<u>\$ 15,395,236</u>
Recommended Budget	<u><u>\$ 235,753,942</u></u>

City of Ontario
 Summary of General Fund Recommended Transfer Adjustments
 Fiscal Year 2017-18
 First Budget Update

	Operating Transfers-In	Operating Transfers-Out
Adopted Budget	\$ 39,228,418	\$ 8,318,512
Current Budget	\$ 39,228,418	\$ 8,318,512
Recommended Adjustments:		
Police helicopter - offset with \$1 million sale of existing helicopter (Transfer-in from Fund 098)	\$ 4,500,000	\$ -
Total Recommended Adjustments	\$ 4,500,000	\$ -
Recommended Budget	\$ 43,728,418	\$ 8,318,512

City of Ontario
 General Fund Balance with Recommended Adjustments
 Fiscal Year 2017-18
 First Budget Update

General Fund	Actual 2016-17 Unaudited	Adopted 2017-18 Budget	Prior Budget Update Approved Adjustments	Current 2017-18 Budget	First Budget Update Recommended Adjustments	Recommended Budget 2017-18
Total Revenues	\$ 192,664,498	\$ 189,448,800	\$ -	\$ 189,448,800	\$ 5,555,000	\$ 195,003,800
Total Expenditures	(204,041,041)	(220,358,706)	-	(220,358,706)	(15,395,236)	(235,753,942)
Excess (Deficiency) of Revenues Over (Under) Expenditures	\$ (11,376,543)	\$ (30,909,906)	\$ -	\$ (30,909,906)	\$ (9,840,236)	\$ (40,750,142)
Other Sources (Uses):						
Operating Transfer In	\$ 31,925,325	\$ 39,228,418	\$ -	\$ 39,228,418	\$ 4,500,000	\$ 43,728,418
Operating Transfer Out	(31,778,262)	(8,318,512)	-	(8,318,512)	-	(8,318,512)
Total Other Sources (Uses)	\$ 147,063	\$ 30,909,906	\$ -	\$ 30,909,906	\$ 4,500,000	\$ 35,409,906
Excess (Deficiency) of Revenues and Other Financing Sources Over (Under) Expenditures and Other Financing Uses	\$ (11,229,480)	\$ -	\$ -	\$ -	\$ (5,340,236)	\$ (5,340,236)
Fund Balance, Beginning of Year	98,446,379	87,216,899	-	87,216,899	-	87,216,899
Fund Balance, End of Year	\$ 87,216,899	\$ 87,216,899	\$ -	\$ 87,216,899	\$ (5,340,236)	\$ 81,876,663
FUND BALANCE						
Non-Spendable:						
Inventory	\$ 144,481	\$ 144,481	\$ -	\$ 144,481	\$ -	\$ 144,481
Advanced to Other Funds (RDA Loan Repayment)	3,500,000	3,500,000	-	3,500,000	-	3,500,000
Advanced to Other Funds (OIAA Advance)	30,000,000	30,000,000	-	30,000,000	-	30,000,000
Long-Term Receivable	38,000	38,000	-	38,000	-	38,000
Prepays	214,380	214,380	-	214,380	-	214,380
Total Non-Spendable	\$ 33,896,861	\$ 33,896,861	\$ -	\$ 33,896,861	\$ -	\$ 33,896,861
Assigned:						
Continuing Appropriations	3,250,438	3,250,438	-	3,250,438	(3,250,438)	-
18% Stabilization Plan	50,069,600	50,069,600	-	50,069,600	(2,089,798)	47,979,802
Total Assigned	\$ 53,320,038	\$ 53,320,038	\$ -	\$ 53,320,038	\$ (5,340,236)	\$ 47,979,802
Total Fund Balance (Non-Spendable, Assigned)	87,216,899	87,216,899	-	87,216,899	(5,340,236)	81,876,663
Total Available for Contingencies and Emergencies	\$ 53,320,038	\$ 53,320,038	\$ -	\$ 53,320,038	\$ (5,340,236)	\$ 47,979,802

City of Ontario
 Unreserved Fund Balance with Recommended Adjustments for All Funds
 Fiscal Year 2017-18
 First Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2017	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2017	Recommended First Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2017
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
General Fund (incl. encumbrances)									
001 General Fund	\$ 53,320,038	\$ 189,448,800	\$ 39,228,418	\$ 8,318,512	\$ 273,678,744	\$ 220,358,706	\$ 53,320,038	\$ (5,340,236)	\$ 47,979,802
Total General Fund	<u>\$ 53,320,038</u>	<u>\$ 189,448,800</u>	<u>\$ 39,228,418</u>	<u>\$ 8,318,512</u>	<u>\$ 273,678,744</u>	<u>\$ 220,358,706</u>	<u>\$ 53,320,038</u>	<u>\$ (5,340,236)</u>	<u>\$ 47,979,802</u>
Special Revenue Funds									
002 Quiet Home Program	\$ -	\$ 1,067,000	\$ -	\$ -	\$ 1,067,000	\$ 1,067,000	\$ -	\$ -	\$ -
003 Gas Tax	2,991,746	4,875,566	900,000	2,782,930	5,984,382	3,015,913	2,968,469	(1,668,765)	1,299,704
004 Measure I	5,606,106	3,007,146	-	-	8,613,252	3,865,000	4,748,252	(3,067,507)	1,680,745
007 Park Impact/Quimby	(5,281,737)	-	-	-	(5,281,737)	-	(5,281,737)	-	(5,281,737)
008 C.D.B.G.	-	2,803,640	-	-	2,803,640	2,803,640	-	-	-
009 HOME Grants	-	2,297,206	-	-	2,297,206	2,297,206	-	-	-
010 Asset Seizure	3,513,510	-	-	-	3,513,510	612,110	2,901,400	(1,149,068)	1,752,332
011 Neighborhood Stabilization	-	-	-	-	-	-	-	-	-
013 A.D. Administration	1,017,609	22,721	-	-	1,040,330	286,837	753,493	-	753,493
014 Mobile Source Air	1,056,948	212,088	-	25,643	1,243,393	35,723	1,207,670	(559,007)	648,663
015 General Fund Grants	-	24,000	-	-	24,000	24,000	-	-	-
018 Building Safety	-	910,000	-	53,580	856,420	1,169,569	(313,149)	-	(313,149)
019 Parkway Maintenance	927,701	608,682	368,512	246,715	1,658,180	853,600	804,580	-	804,580
021 Storm Drain Fee District	69,142	775	-	-	69,917	-	69,917	-	69,917
060 OMC CFD #21-Parkside Services	66,599	52,081	-	24,000	94,680	27,500	67,180	-	67,180
061 NMC CFD #31-Lennar Services	173,910	251,634	-	243,400	182,144	7,400	174,744	-	174,744
062 NMC CFD #23-Park Place Services	53,986	650,000	-	645,000	58,986	5,000	53,986	-	53,986
064 NMC CFD #27-New Haven Services	73,361	399,305	-	393,000	79,666	5,000	74,666	-	74,666
069 NMC CFD #20-Walmart Services	35,114	26,400	-	5,000	56,514	21,000	35,514	-	35,514
048 Ontario Housing Authority	2,809,169	337,956	-	-	3,147,125	801,107	2,346,018	(62,235)	2,283,783
070 Street Light Maintenance	2,243,619	499,700	-	113,675	2,629,644	368,542	2,261,102	(2,433)	2,258,669
071 CFD #10-Airport Tower Services	-	11,000	-	11,000	-	-	-	-	-
072 NMC CFD #9-Edenglen Services	(39,583)	545,000	-	532,600	(27,183)	12,400	(39,583)	-	(39,583)
076 Facilities Maintenance	45,391	-	1,000,000	-	1,045,391	1,000,000	45,391	(21,513)	23,878
077 Storm Drain Maintenance	605,147	1,240,656	-	-	1,845,803	1,727,465	118,338	(7,666)	110,672
114 Historic Preservation	219,489	2,456	-	-	221,945	-	221,945	-	221,945
119 NMC Public Services	5,377,108	56,582	-	-	5,433,690	-	5,433,690	-	5,433,690
Total Special Revenue Funds	<u>\$ 21,564,335</u>	<u>\$ 19,901,594</u>	<u>\$ 2,268,512</u>	<u>\$ 5,076,543</u>	<u>\$ 38,657,898</u>	<u>\$ 20,006,012</u>	<u>\$ 18,651,886</u>	<u>\$ (6,538,194)</u>	<u>\$ 12,113,692</u>
Capital Project Funds									
016 Ground Access	\$ 9,878,981	\$ 96,380	\$ -	\$ -	\$ 9,975,361	\$ -	\$ 9,975,361	-	\$ 9,975,361
017 Capital Projects	27,695,731	-	7,869,423	-	35,565,154	7,869,423	27,695,731	(16,082,013)	11,613,718
101 Law Enforcement Impact	(1,030,154)	15,595	-	-	(1,014,559)	-	(1,014,559)	-	(1,014,559)

City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2017-18
First Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2017	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2017	Recommended First Budget Update Adjustments to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2017
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
106 Solid Waste Impact	2,946,274	29,846	-	-	2,976,120	100,000	2,876,120	-	2,876,120
107 General Facility Impact	2,684,435	27,846	-	-	2,712,281	-	2,712,281	-	2,712,281
108 Library Impact	2,748,729	21,534	-	-	2,770,263	-	2,770,263	-	2,770,263
109 Public Meeting Impact	3,744,103	32,185	-	-	3,776,288	-	3,776,288	-	3,776,288
110 Aquatics Impact	317,060	2,891	-	-	319,951	-	319,951	-	319,951
112 Species Habitat Impact	2,123,344	21,637	-	-	2,144,981	-	2,144,981	-	2,144,981
120 Affordability In-Lieu	9,111,153	89,866	-	-	9,201,019	-	9,201,019	-	9,201,019
170 OMC - Regional Streets	8,480,212	72,559	-	-	8,552,771	2,429,199	6,123,572	(5,104,976)	1,018,596
171 OMC - Local Adjacent Streets	10,555,502	128,752	-	-	10,684,254	10,223,438	460,816	(5,512,852)	(5,052,036)
172 OMC - Regional Storm Drains	1,351,796	14,710	-	-	1,366,506	-	1,366,506	-	1,366,506
173 OMC - Local Adjacent Storm Drain	16,359,053	230,527	-	-	16,589,580	6,899,678	9,689,902	(2,646,273)	7,043,629
174 OMC - Regional Water	13,417,299	188,083	-	-	13,605,382	-	13,605,382	-	13,605,382
175 OMC - Local Adjacent Water	1,688,293	28,378	-	-	1,716,671	-	1,716,671	(194,880)	1,521,791
176 OMC - Regional Sewer	2,425,934	24,067	-	-	2,450,001	-	2,450,001	-	2,450,001
177 OMC - Local Adjacent Sewer	4,033,600	40,965	-	-	4,074,565	3,500,000	574,565	(170,683)	403,882
178 OMC - Fire Impact	-	-	-	-	-	132,582	(132,582)	(2,081,468)	(2,214,050)
180 OMC - Regional Streets	1,408,679	16,339	-	-	1,425,018	-	1,425,018	(2,136,732)	(711,714)
181 NMC - Local Adjacent Streets	2,181,864	20,707	-	-	2,202,571	-	2,202,571	-	2,202,571
182 NMC - Regional Storm Drains	845,894	10,877	-	-	856,771	-	856,771	-	856,771
183 NMC - Local Adjacent Storm Drain	3,260,365	51,230	-	-	3,311,595	-	3,311,595	-	3,311,595
184 NMC - Regional Water	-	-	-	-	-	-	-	-	-
185 NMC - Local Adjacent Water	2,168,608	158,919	-	-	2,327,527	1,000,000	1,327,527	-	1,327,527
186 NMC - Regional Sewer	274,828	4,227	-	-	279,055	-	279,055	-	279,055
187 NMC - Local Adjacent Sewer	248,513	3,869	-	-	252,382	-	252,382	-	252,382
188 NMC - Local Regional Fiber	-	-	-	-	-	-	-	-	-
189 NMC - Local Adjacent Fiber	384,985	36,477	-	-	421,462	-	421,462	285,120	706,582
190 NMC - Fire Impact	7,974,821	91,433	-	-	8,066,254	-	8,066,254	(8,749,056)	(682,802)
501 NMC CFD - Developer Deposits	481,878	-	-	-	481,878	-	481,878	-	481,878
502 OMC CFD - Developer Deposits	74,996	-	-	-	74,996	-	74,996	-	74,996
Total Capital Project Funds	\$ 137,836,776	\$ 1,459,899	\$ 7,869,423	\$ -	\$ 147,166,098	\$ 32,154,320	\$ 115,011,778	\$ (42,393,813)	\$ 72,617,965
Enterprise Funds									
024 Water Operating	61,524,365	* \$ 55,633,983	\$ -	\$ 31,137,953	86,020,395	\$ 45,733,604	\$ 40,286,791	\$ (364,426)	\$ 39,922,365
025 Water Capital	65,867,434	* 860,979	18,000,000	3,918,150	80,810,263	20,457,992	60,352,271	(42,592,441)	17,759,830
026 Sewer Operating	27,450,984	* 25,035,440	-	10,290,913	42,195,511	19,598,109	22,597,402	(78,976)	22,518,426
027 Sewer Capital	20,838,792	* 237,848	4,000,000	1,039,688	24,036,952	5,200,660	18,836,292	(967,623)	17,868,669
029 Solid Waste	33,366,619	* 33,974,108	-	9,015,171	58,325,556	31,113,118	27,212,438	(5,189,374)	22,023,064
031 Solid Waste Facilities	649,815	* 7,364	-	-	657,179	-	657,179	(63,838)	593,341
035 I.T. Fiber	6,732,860	425,000	-	-	7,157,860	1,691,646	5,466,214	(13,237,445)	(7,771,231)
Total Enterprise Funds	\$ 216,430,869	\$ 116,174,722	\$ 22,000,000	\$ 55,401,875	\$ 299,203,716	\$ 123,795,129	\$ 175,408,587	\$ (62,494,123)	\$ 112,914,464

City of Ontario
 Unreserved Fund Balance with Recommended Adjustments for All Funds
 Fiscal Year 2017-18
 First Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2017	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2017	Recommended First Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2017
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
Internal Service Funds									
032 Equipment Services	37,240,078	\$ 11,362,722	\$ -	\$ -	\$ 48,602,800	\$ 17,460,261	\$ 31,142,539	\$ (5,852,282)	\$ 25,290,257
033 Self Insurance	14,045,477	10,996,849	-	-	25,042,326	7,657,065	17,385,261	(548,140)	16,837,121
034 Information Technology	18,822,009	8,417,663	90,000	840,000	26,489,672	15,497,682	10,991,990	(1,532,282)	9,459,708
099 Other Post Employment Benefits (OPEB)	178,766,241	11,322,827	-	-	190,089,068	4,500,000	185,589,068	-	185,589,068
Total Internal Service Funds	<u>\$ 248,873,805</u>	<u>\$ 42,100,061</u>	<u>\$ 90,000</u>	<u>\$ 840,000</u>	<u>\$ 290,223,866</u>	<u>\$ 45,115,008</u>	<u>\$ 245,108,858</u>	<u>\$ (7,932,704)</u>	<u>\$ 237,176,154</u>
Fiduciary Funds									
098 General Fund Trust	31,256,343	\$ -	\$ 3,950,000	\$ 5,769,423	\$ 29,436,920	-	\$ 29,436,920	\$ (5,716,395)	\$ 23,720,525
Total Trust Funds	<u>\$ 31,256,343</u>	<u>\$ -</u>	<u>\$ 3,950,000</u>	<u>\$ 5,769,423</u>	<u>\$ 29,436,920</u>	<u>\$ -</u>	<u>\$ 29,436,920</u>	<u>\$ (5,716,395)</u>	<u>\$ 23,720,525</u>
	<u>\$ 709,282,166</u>	<u>\$ 369,085,076</u>	<u>\$ 75,406,353</u>	<u>\$ 75,406,353</u>	<u>\$ 1,078,367,242</u>	<u>\$ 441,429,175</u>	<u>\$ 636,938,067</u>	<u>\$ (130,415,465)</u>	<u>\$ 506,522,602</u>

* Fund Balance amount is the Fund's actual working capital.

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2017-18
First Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 001 - General Fund					
<i>Current Year Adjustments to Fund Balance</i>					
Police helicopter (offset with \$1 million sale of existing helicopter) (Transfer-in from Fund 098)	5,500,000	1,000,000	4,500,000		-
Sales tax abatement disclosures requirement (offset with Sales Tax Revenue) (Reporting requirement per GASB #77)	4,500,000	4,500,000			-
Gold Line extension to Ontario International Airport alternatives analysis (CC Apprvd 8/15/2017)	1,500,000				(1,500,000)
Additional Police vehicles (5): canine/background investigators/forensics	270,000				(270,000)
Airport Police Dispatch video security monitors (10)	92,650				(92,650)
Tree replacements and landscape retrofit at Homer Briggs Park	53,863				(53,863)
Fire training materials and travel (Offset by Cal-JAC reimbursement)	50,000	50,000			-
Police canine and handler training and equipment	39,000				(39,000)
Landscape maintenance services at former Redevelopment properties & sites (CC Apprvd 6/20/2017)	25,503				(25,503)
Additional animal control contract services	16,110				(16,110)
FY 2016-17 Carryforward Encumbrances	3,250,438	5,000			(3,245,438)
Recommended personnel changes	93,340				(93,340)
Temporary/Part Time Salaries for Administrative Services/Fiscal Services (Zero impact from deletion of Full Time position)	4,332				(4,332)
Total General Fund Adjustments	<u>15,395,236</u>	<u>5,555,000</u>	<u>4,500,000</u>	<u>-</u>	<u>(5,340,236)</u>
+/- Required Reserve Changes:					
Carryforward Appropriations Reserve					3,250,438
Total General Fund Adjustments					<u>(2,089,798)</u>
Fund 003 - Gas Tax					
Infrastructure Improvement Project / 2016 Safe Routes to School Program - City's match	228,000				(228,000)
Traffic signal modifications and system upgrades	180,000	90,000			(90,000)
Street Maintenance Overlay program/Revise budget	110,982				(110,982)
Personnel re-allocation/Revise budget	100				(100)
Carryforward Encumbrances from FY 2016-17	531,537	13,209			(518,328)
Carryforward CIP Appropriations from FY 2016-17	1,259,557	538,202			(721,355)
	<u>2,310,176</u>	<u>641,411</u>	<u>-</u>	<u>-</u>	<u>(1,668,765)</u>
Fund 004 - Measure I Five-Year Capital Improvement Plan					
Carryforward Encumbrances from FY 2016-17	674,775				(674,775)
Carryforward CIP Appropriations from FY 2016-17	2,392,732				(2,392,732)
	<u>3,067,507</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(3,067,507)</u>

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2017-18
First Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 005 - Measure I-Valley Major Projects					
Carryforward Encumbrances from FY 2016-17	5,744,616	5,744,616			-
Carryforward CIP Appropriations from FY 2016-17	23,301,038	23,301,038			-
	29,045,654	29,045,654	-	-	-
Fund 008 - Community Development Block Grant					
De Anza Restroom Renovation Project (CC Apprvd 4/7/2017)	247,230	247,230			-
Community Development Block Grant and ESG Grant Program/Revise budget (CC Apprvd 6/21/2017)	105,660	105,660			-
	352,890	352,890	-	-	-
Fund 009 - HOME Grants					
HOME Grant Program /Revise budget	(10,601)	(10,601)			-
	(10,601)	(10,601)	-	-	-
Fund 010 - Asset Seizure					
Police night vision equipment	290,000				(290,000)
Carryforward Encumbrances from FY 2016-17	859,068				(859,068)
	1,149,068	-	-	-	(1,149,068)
Fund 014 - Mobile Source Air					
Carryforward Encumbrances from FY 2016-17	45,403				(45,403)
Carryforward Grant Appropriations from FY 2016-17	513,604				(513,604)
	559,007	-	-	-	(559,007)
Fund 015 - General Fund Grants					
2016 Safe Routes to School Program - Sultana Elementary and De Anza Middle Schools	1,278,000	1,278,000			-
FY 2017-2018 OTS STEP Grant (CC Apprvd 1/17/2017)	765,000	765,000			-
FY 2016-17 COPS/ELEAS/Additional grant allocation	103,116	103,116			-
FY 2017-18 Alcohol Beverage Control (ABC) GAP Grant (CC Apprvd 6/20/2017)	37,914	37,914			-
Edward Byrne Memorial Justice Assistance Grant (JAG) FY 2017: body cameras (CC Apprvd 9/5/2017)	34,745	34,745			-
FY 2017 Homeland Security Grant: radiation detection equipment & data service access device (Fire)	30,810	30,810			-
FY 2017 Emergency Management Performance Grant: video teleconference systems (Fire)	26,511	26,511			-

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2017-18
First Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
National Endowment for the Arts (NEA) - Arts Engagement in American Communities (Library)	10,000	10,000			-
Public Library Foundation Grant/Revise budget	6,000	6,000			-
Carryforward Encumbrances from FY 2016-17	1,505,372	1,505,372			-
Carryforward Grant Appropriations from FY 2016-17	3,835,576	3,835,576			-
	<u>7,633,044</u>	<u>7,633,044</u>	-	-	-
Fund 016 - Ground Access					
Carryforward Encumbrances from FY 2016-17	383,863	383,863			-
Carryforward CIP Appropriations from FY 2016-17	2,459,431	2,459,431			-
	<u>2,843,294</u>	<u>2,843,294</u>	-	-	-
Fund 017 - Capital Projects					
Citizens Business Bank Arena equipment replacement (Transfer-in from Fund 098)	457,210		457,210		-
Police Headquarters improvements (CC Apprvd 6/6/2017) (Transfer-in from Fund 098)	759,185		759,185		-
Roof replacement at Ontario Municipal Services Center project (CC Apprvd 6/20/2017)	175,777				(175,777)
Carryforward Encumbrances from FY 2016-17	6,668,288	3,193,130			(3,475,158)
Carryforward CIP Appropriations from FY 2016-17	12,431,078				(12,431,078)
	<u>20,491,538</u>	<u>3,193,130</u>	<u>1,216,395</u>	-	<u>(16,082,013)</u>
Fund 024 - Water Operating					
Carryforward Encumbrances from FY 2016-17	364,426				(364,426)
	<u>364,426</u>	-	-	-	<u>(364,426)</u>
Fund 025 - Water Capital					
Carryforward Encumbrances from FY 2016-17	2,404,309				(2,404,309)
Carryforward CIP Appropriations from FY 2016-17	40,188,132				(40,188,132)
	<u>42,592,441</u>	-	-	-	<u>(42,592,441)</u>
Fund 026 - Sewer Operating					
Carryforward Encumbrances from FY 2016-17	78,976				(78,976)
	<u>78,976</u>	-	-	-	<u>(78,976)</u>

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2017-18
First Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 027 - Sewer Capital					
Carryforward Encumbrances from FY 2016-17	195,728				(195,728)
Carryforward CIP Appropriations from FY 2016-17	771,895				(771,895)
	967,623	-	-	-	(967,623)
Fund 029 - Solid Waste					
FY 2016-2017 Bottle Bill Grant (CC Apprvd 4/4/2017)	42,441	42,441			-
Used Oil Payment Program (OPP8) Grant FY 2017-18 (CC Apprvd 6/6/2017)	46,961	46,961			-
Carryforward Encumbrances from FY 2016-17	671,552				(671,552)
Carryforward CIP Appropriations from FY 2016-17	4,672,547	154,725			(4,517,822)
	5,433,501	244,127	-	-	(5,189,374)
Fund 031 - Solid Waste Facilities					
Carryforward CIP Appropriations from FY 2016-17	63,838				(63,838)
	63,838	-	-	-	(63,838)
Fund 032 - Equipment Services					
Fire damaged refuse vehicles replacements (4)	1,335,000				(1,335,000)
Vehicle purchases/Revise budget	105,000				(105,000)
Vehicle (1): City Manager (CC Apprvd 11/7/2017)	60,000				(60,000)
Carryforward Encumbrances from FY 2016-17	3,941,003				(3,941,003)
Carryforward CIP Appropriations from FY 2016-17	411,279				(411,279)
	5,852,282	-	-	-	(5,852,282)
Fund 033 - Self Insurance					
Settlement claims/Revise budget	550,000				(550,000)
Personnel re-allocations/Revise budget	(1,860)				1,860
	548,140	-	-	-	(548,140)
Fund 034 - Information Technology					
Carryforward Encumbrances from FY 2016-17	1,305,987	500,000			(805,987)
Carryforward CIP Appropriations from FY 2016-17	726,295				(726,295)
	2,032,282	500,000	-	-	(1,532,282)
Fund 035 - Information Technology Fiber					
Carryforward Encumbrances from FY 2016-17	2,526,632	6,000			(2,520,632)
Carryforward CIP Appropriations from FY 2016-17	10,716,813				(10,716,813)
	13,243,445	6,000	-	-	(13,237,445)

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2017-18
First Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 048 - Ontario Housing Authority					
Carryforward Encumbrances from FY 2016-17	62,235				(62,235)
	62,235	-	-	-	(62,235)
Fund 070 - Street Light Maintenance					
Carryforward Encumbrances from FY 2016-17	2,433				(2,433)
	2,433	-	-	-	(2,433)
Fund 076 - Facility Maintenance					
Carryforward Encumbrances from FY 2016-17	21,513				(21,513)
	21,513	-	-	-	(21,513)
Fund 077 - Storm Drain Maintenance					
Carryforward Encumbrances from FY 2016-17	7,666				(7,666)
	7,666	-	-	-	(7,666)
Fund 098 - General Fund Trust					
Transfer-out (To Fund 001) Police helicopter purchase (Public Safety Equipment Reserve)				4,500,000	(4,500,000)
Transfer-out (To Fund 017) Citizens Business Arena equipment (Events Center Capital Reserve)				457,210	(457,210)
Transfer-out: (To Fund 017) Police Headquarter improvements (City Facilities Reserve)				759,185	(759,185)
	-	-	-	5,716,395	(5,716,395)
Fund 170 - OMC Regional Streets					
Carryforward Encumbrances from FY 2016-17	1,333,245				(1,333,245)
Carryforward CIP Appropriation from FY 2016-17	3,771,731				(3,771,731)
	5,104,976	-	-	-	(5,104,976)
Fund 171 - OMC Local Adjacent Streets					
Traffic Signal Improvements at Baker/Sixth & Campus/Philadelphia (CC Apprvd 8/15/2017)	118,700				(118,700)
Carryforward Encumbrances from FY 2016-17	499,544				(499,544)
Carryforward CIP Appropriation from FY 2016-17	4,894,608				(4,894,608)
	5,512,852	-	-	-	(5,512,852)
Fund 173 - OMC Local Adjacent Storm Drainage					
Carryforward Encumbrances from FY 2016-17	2,569,122				(2,569,122)
Carryforward CIP Appropriation from FY 2016-17	77,151				(77,151)
	2,646,273	-	-	-	(2,646,273)

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2017-18
First Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 175 - OMC Local Adjacent Water					
Carryforward Encumbrances from FY 2016-17	194,880				(194,880)
	<u>194,880</u>	-	-	-	<u>(194,880)</u>
Fund 177 - OMC Local Adjacent Sewer					
Carryforward Encumbrances from FY 2016-17	67,638				(67,638)
Carryforward CIP Appropriation from FY 2016-17	103,045				(103,045)
	<u>170,683</u>	-	-	-	<u>(170,683)</u>
Fund 178 - OMC Fire Impact					
Carryforward Encumbrances from FY 2016-17	47,922				(47,922)
Carryforward CIP Appropriation from FY 2016-17	2,033,546				(2,033,546)
	<u>2,081,468</u>	-	-	-	<u>(2,081,468)</u>
Fund 180 - NMC Regional Streets					
State Route 60 Fwy at Archibald Ave Interchange Improvements right-of-way phase/Revise budget	906,538				(906,538)
Carryforward Encumbrances from FY 2016-17	331,329				(331,329)
Carryforward CIP Appropriation from FY 2016-17	898,865				(898,865)
	<u>2,136,732</u>	-	-	-	<u>(2,136,732)</u>
Fund 189 - NMC Local Adjacent Fiber DIF					
Local Adjacent Fiber Development Impact Fee Revenue		285,120			285,120
	-	<u>285,120</u>	-	-	<u>285,120</u>
Fund 190 - NMC Fire Impact					
Carryforward Encumbrances from FY 2016-17	195,218				(195,218)
Carryforward CIP Appropriation from FY 2016-17	8,553,838				(8,553,838)
	<u>8,749,056</u>	-	-	-	<u>(8,749,056)</u>
Total Other Fund Adjustments	<u><u>165,309,298</u></u>	<u><u>44,734,069</u></u>	<u><u>1,216,395</u></u>	<u><u>5,716,395</u></u>	<u><u>(125,075,229)</u></u>

SCHEDULE VII

City of Ontario
 Recommended Personnel and Organizational Changes
 Fiscal Year 2017-18
 First Budget Update

<u>Agency/Department</u>	<u>Position</u>	<u>Action</u>	<u>Salary Range</u>
Administrative Services/Fiscal Services	Senior Financial Analyst	Addition	\$ 7,590 - \$ 9,227
Administrative Services/Fiscal Services	Financial Analyst	Deletion	\$ 6,850 - \$ 8,324
Administrative Services/Fiscal Services	Accountant	Addition	\$ 5,193 - \$ 6,311
Administrative Services/Fiscal Services	Payroll Analyst	Deletion	\$ 5,470 - \$ 6,650
Development/Engineering	Principal Planner	Addition	\$ 9,823 - \$ 11,937
Development/Engineering	Principal Engineer	Deletion	\$ 9,719 - \$ 11,813
Police Department/Canine	Police Officer	Addition	\$ 5,642 - \$ 6,858
Risk Management	Risk Management Director	Deletion	\$ 9,875 - \$ 12,002
Risk Management	Risk/Safety Manager	Addition	\$ 8,239 - \$ 10,013
Risk Management	Risk Management Technician	Deletion	\$ 4,807 - \$ 5,843
Risk Management	Risk Management Coordinator	Addition	\$ 6,032 - \$ 7,330
Human Resources	Human Resources Director to	Reclass	\$ 11,154 - \$ 13,560
	Human Resources/Risk Management Director		\$ 11,695 - \$ 14,215

<u>Impact by Fund</u>		<u>Current</u>	<u>Annual</u>
Fund 001	General Fund	\$ 93,340	\$ 160,011
Fund 003	Gas Tax	100	171
Fund 033	Risk Management	(1,860)	(3,187)
Total		\$ 91,580	\$ 156,995

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: AN LS-1 OPTION E AGREEMENT WITH SOUTHERN CALIFORNIA EDISON FOR STREET LIGHT REPLACEMENT

RECOMMENDATION: That the City Council approve an LS-1 Option E Agreement (on file in the Records Management Department) with Southern California Edison (SCE) to replace SCE-owned street lights from High Pressure Sodium Vapour (HPSV) to Light Emitting Diode (LED) with no upfront cost to the City, and authorize the City Manager to execute the Agreement.

COUNCIL GOALS: Pursue City's Goals and Objectives by Working with Other Governmental Agencies


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

FISCAL IMPACT: There is an anticipated net savings of approximately \$105,000 over the 20 year replacement life of the LED retrofits. After the 20 year replacement period, there will be an annual savings of approximately \$14,850, which will be reflected in future appropriations for electric services.

BACKGROUND: SCE owns and operates approximately 566 streetlights within the City limits. On June 1, 2016, the LS-1 Option E Tariff became available to cities for street light LED retrofits. This new tariff allows SCE to replace HPSV lamps with more efficient LED lamps with no up-front capital cost to customers and includes a 20 year energy efficiency premium designed to recover the initial capital expenditure associated with the LED street light replacements. The energy efficiency premium charge is locked in for 20 years, while the LS-1 Option E tariff will move accordingly with the CPUC approved rate change. The City does have the option to pay off the recovery mechanism at any time to realize the full impact of the energy savings sooner, if it so chooses.

Once the LS-1 Option E agreement is executed, the City will be placed into the queue for jurisdictions awaiting LED conversion. There are currently over 25 cities that have entered into such agreements and are participating in the program. The SCE LED conversions meet City specifications and have been approved by the Engineering Department.

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

Prepared by: Michael Johnson
Department: Municipal Services
City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: REVISIONS TO THE COMPENSATION AND BENEFITS PROFILE FOR NON-REPRESENTED PART-TIME EMPLOYEES DUE TO INCREASES IN THE STATE'S MINIMUM WAGE

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute revisions to the Salary Schedule section and any non-substantive changes to update the current Compensation and Benefits Profile (on file with the Records Management Department) for employees in the non-represented Part-Time Employees Group to ensure compliance with the State of California's Labor Code regarding minimum wage changes effective January 2018; and authorize the City Manager to implement any future legally mandated changes to minimum wage rates to ensure ongoing legal compliance.

COUNCIL GOALS: Operate in a Businesslike Manner

FISCAL IMPACT: The estimated additional annual cost of this compensation increase across all funds is approximately \$62,700 for FY 2017-18, of which the estimated General Fund portion is \$56,800. If approved, additional appropriations will be included in the next quarterly budget report for City Council action.

BACKGROUND: As of January 2017 minimum wage increased from \$10.00 per hour to \$10.50 per hour. On January 1, 2018 the statutory minimum wage will increase to \$11.00 per hour. Effective January 2019, the minimum wage rate will increase by \$1.00 and continue with \$1.00 increments on January 1st of each year through 2022. Accordingly, as of January 1, 2022 the minimum wage rate will be \$15.00 per hour.

Due to the January 2018 increase, it is necessary to revise the Salary Schedule associated with Part-Time classifications to ensure compliance with State Labor Code and also to address wage parity among all Part-Time group classifications. It should be noted that part-time classifications did not receive the 3% salary increase that the full-time miscellaneous classifications received in July 2017. Therefore, it is recommended that the City Council approve a 2.5% increase to the current base wage ranges for all

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

Prepared by: Angela C. Lopez
Department: Human Resources

City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017

Approved: _____

Continued to: _____

Denied: _____

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Part-Time classifications effective December 24, 2017. This adjustment will also enable the City to attract, retain and motivate a highly qualified Part-Time workforce. Employees designated as Part-Time but working in full-time classifications will not be eligible for the range adjustment. The following summarizes the proposed ranges after the recommended increase is applied.

Classification	Current Range	Proposed Range
	January 8, 2017	December 24, 2017
Administrative Intern	\$10.73 - \$16.61	\$11.00 - \$17.03
Instructor Guard	\$12.23 - \$14.85	\$12.54 - \$15.23
Library Monitor Specialist	\$16.39 - \$19.93	\$16.80 - \$20.43
Library Page	\$10.73 - \$13.02	\$11.00 - \$13.35
Lifeguard	\$11.40 - \$13.85	\$11.69 - \$14.20
Museum Assistant	\$15.99 - \$19.43	\$16.39 - \$19.92
Museum Attendant	\$10.73 - \$13.03	\$11.00 - \$13.35
Police Cadet	\$13.46 - \$18.02	\$13.80 - \$18.48
Pool Manager	\$14.69 - \$17.85	\$15.06 - \$18.30
Recreation Assistant	\$10.73 - \$13.02	\$11.00 - \$13.35
Recreation Leader	\$11.40 - \$13.85	\$11.69 - \$14.20
Senior Pool Manager	\$15.99 - \$19.43	\$16.39 - \$19.92
Senior Recreation Leader	\$12.98 - \$15.78	\$13.31 - \$16.18

Finally, legislation impacting employment law is continuously changing, and the City has an obligation to ensure ongoing compliance with the State of California’s Labor Code and applicable Federal Laws. Accordingly, it is recommended that the City Manager be authorized to execute future range revisions as new legislation is adopted and implemented.

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE APPROVING AN AMENDMENT TO THE ONTARIO MUNICIPAL CODE, REESTABLISHING TITLE 4 (PUBLIC SAFETY), CHAPTER 13, TITLED “OFF-STREET PARKING PROHIBITIONS AND RESTRICTIONS”

RECOMMENDATION: That the City Council consider and adopt an ordinance reestablishing Ontario Municipal Code Title 4 (Public Safety), Chapter 13, titled “Off-Street Parking Prohibitions and Restrictions.”

COUNCIL GOALS: Maintain the Current High Level of Public Safety Focus Resources in Ontario’s Commercial and Residential Neighborhoods


FISCAL IMPACT: None.

BACKGROUND: On November 7, 2017, the City Council introduced an ordinance approving the Amendment to the Ontario Municipal Code. In December 2015, the City Council approved a comprehensive update to the City’s Development Code, which became effective in January 2016. The update, in part, repealed several provisions of the Ontario Municipal Code, moving them to the Ontario Development Code, as they comprised various land use and development criteria. Included with the repealed and relocated Ontario Municipal Code provisions was Title 4 (Public Safety), Chapter 13 (Parking on Unpaved Surfaces), in which Planning Department staff worked with Code Enforcement Department staff to combine all off-street parking provisions into a single location contained within City of Ontario Development Code Division 6.03 (Off-Street Parking and Loading).

It is now recommended that Ontario Municipal Code Title 4 (Public Safety), Chapter 13 (to be titled “Off-Street Parking Prohibitions and Restrictions”), be reestablished to include clarified provisions addressing the following:

[1] Generally prohibits parking any vehicle on undeveloped or unpaved areas of lots designated for residential and/or nonresidential purposes;

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

Prepared by: Charles Mercier
Department: Planning Department
City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

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[2] Prohibits parking on landscaped areas and unpaved surfaces within any front or street side yard area of any property zoned or used for residential purposes;

[3] Prohibits vehicular access across landscaped areas and unpaved surfaces within any front or street side yard area of any property zoned or used for residential purposes, to an area used for the parking or storage of any vehicle; however, an exception may be granted by the Planning Director in those cases where access is so infrequent as to cause no discernible effect on the landscaping.

Furthermore, the parking of vehicles is allowed on lawns or other unpaved surfaces for the purposes of washing or making emergency repairs to a vehicle, or for on-site construction. Parking may not exceed a total of 3 hours duration within any consecutive 24-hour period; and

[4] Restricts commercial vehicles (having a gross vehicle weight rating (GVWR) in excess of 10,000 pounds) from parking in residential zones and outside of designated loading areas on commercially zoned property. Moreover, clarified restrictions have been added, which address the parking of commercial vehicles (having a GVWR in excess of 10,000 pounds) in residential districts and within parking lots in commercial districts, outside of approved loading areas.

Relocating the above-described off-street parking provisions to be included with the other existing public safety provisions of the Ontario Municipal Code will strengthen the City's ability to abate illegal off-street parking throughout the City.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Ontario Municipal Code Amendment is consistent with the principles, goals and policies contained within the Vision, Governance, and Policy Plan (General Plan) components of The Ontario Plan.

AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE: The proposed Ontario Municipal Code Amendment may affect the use of properties located within the Airport Influence Area of Ontario International Airport. The Amendment has, therefore, been reviewed for compliance with the Ontario International Airport Land Use Compatibility Plan (ALUCP), and has been found to be consistent with the policies and criteria set forth within the ALUCP.

ENVIRONMENTAL REVIEW: The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE ONTARIO MUNICIPAL CODE, REESTABLISHING CHAPTER 13 OF TITLE 4 (PUBLIC SAFETY), TO BE TITLED "OFF-STREET PARKING PROHIBITIONS AND RESTRICTIONS," AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario ("Applicant") has initiated an amendment to the Ontario Municipal Code, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, in December 2015, the City Council approved a comprehensive update to the City's Development Code, which became effective in January 2016. The update repealed several provisions of the Ontario Municipal Code, moving them to the Ontario Development Code, as they comprised various land use and development criteria. Included with the repealed and relocated Ontario Municipal Code provisions was Title 4 (Public Safety), Chapter 13 (Parking on Unpaved Surfaces), in which Planning Department staff worked with Code Enforcement Department staff to combine all off-street parking provisions into a single location, contained in City of Ontario Development Code Division 6.03 (Off-Street Parking and Loading); and

WHEREAS, it is now requested that Ontario Municipal Code Title 4 (Public Safety), Chapter 13 (to be titled "Off-Street Parking Prohibitions and Restrictions"), be reestablished to include clarified provisions addressing: [1] certain prohibitions on parking on undeveloped or unpaved areas of lots designated for residential and/or nonresidential purposes; [2] certain prohibitions on parking on landscaped areas and unpaved surfaces within any front or street side yard area of any property zoned or used for residential purposes; [3] restrictions on vehicular access across landscaped areas and unpaved surfaces within any front or street side yard area of any property zoned or used for residential purposes, to an area used for the parking or storage of any vehicle; and [4] restrictions concerning commercial vehicle (having a gross vehicle weight rating (GVWR) in excess of 10,000 pounds) parking in residential zones and outside of designated loading areas on commercially zoned property. Moreover, clarified restrictions have been added, which address the parking of commercial vehicles (having a GVWR in excess of 10,000 pounds) in residential districts and within parking lots in commercial districts, outside of approved loading areas; and

WHEREAS, it is believed that relocating the above-described off-street parking provisions with the other existing public safety provisions of the Ontario Municipal Code will further aid the Code Enforcement Department in their efforts to abate illegal off-street parking throughout the City; 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 proposed amendment to the Ontario Municipal Code is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, which is the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Application affects, in part, property located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, at their regular meeting of November 7, 2017, the City Council of the City of Ontario conducted a public hearing to consider the Application, and concluded the hearing on that date. Upon conclusion of the public hearing, the City Council approved the introduction of the proposed amendment to the Ontario Municipal Code, and waived further reading of the Ordinance; 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: *Municipal Code Amendment.* Chapter 13 of Ontario municipal Code Title 4 (Public Safety) is hereby titled "Off-Street Parking Prohibitions and Restrictions," shall be instated to read as follows:

Sec. 4-13.01. Definitions.

For the purpose of this Chapter, unless otherwise apparent from the context, certain words and phrases used herein are defined as follows:

(a) "Driveway" shall mean the necessary hard-surfaced area, improved by means of asphalt, concrete, laid brick or block pavers, or other similar material providing all-weather access, excluding loose materials, such as gravel, stone or slag, which is needed for vehicular ingress and egress to a garage, carport or other off-street parking designed pursuant to City of Ontario Development Code Division 6.03 (Off-street Parking and Loading).

(b) "Landscaped Area" shall mean the unpaved portion of a site containing planted areas and plant materials, including trees, shrubs, lawns, and ground covers, together with such decorative elements as walkways, benches, patios, terraces, water features, and the like, suitable for ornamenting a site or structure, or use on the site. Landscaping may also include non-plant decorative material as an intended complementary aspect of a landscape design, such as:

(1) Public art installed pursuant to City of Ontario Development Code Division 6.07 (Public Art);

(2) Decorative fountains, reflecting pools, and ponds;

(3) Decorative rock, stone, bark, mulch, and other similar decorative materials installed for the purpose of reducing the need for the watering of plant material; and

(4) Trellises, porticos, arbors, and other similar garden structures.

(c) "Pavement" shall mean an area improved by the laying or covering with a material, such as asphalt, concrete, laid brick or block pavers, or other similar material so as to form a substantially flat, hard and level all-weather surface. The terms "pavement" and "paving" may be used interchangeably.

(d) "Owner" shall mean any person in possession of a property, or any person(s) shown as owner(s) on the last equalized property tax assessment rolls, or in the case of a vehicle, any person(s) shown as the last registered owner(s) and/or legal owner(s), in accordance with the records of the Department of Motor Vehicles of the registering state.

Sec. 4-13.02. Parking on Undeveloped or Unpaved Areas of Nonresidential Lots.

It is unlawful to park or store any vehicle or equipment on any undeveloped lot, or unpaved area of lot, within any nonresidential zoning district, or any nonresidential land use district of a specific plan or planned unit development, or any other property zoned or used for nonresidential purposes.

Sec. 4-13.03. Parking on Undeveloped or Unpaved Areas of Residential Lots.

(a) It is unlawful for any person to park any vehicle, including but not limited to automobiles, trucks, motor homes, campers, or store any trailer, camper shell, boat or other similar equipment upon any lawn or landscaped area, or other unpaved surface located within any front or street side yard area of a lot lying within any residential zoning district, or any residential land use district of a specific plan or planned unit development, or any other property zoned or used for residential purposes.

(b) It is unlawful for any property owner to permit the parking of any vehicle, including, but not limited to, automobiles, trucks, motor homes, or campers, or permit the storage of any trailer, camper shell, boat, or other similar equipment upon any lawn or landscaped area, or other unpaved surface located within any front or street side yard area

of a lot lying within any residential zoning district, or any residential land use district of a specific plan or planned unit development, or any other property zoned or used for residential purposes.

(c) It is unlawful for any person to use, or permit the use of, any lawn or landscaped area, or other unpaved area of a lot for the purpose of vehicular access to an area used for the parking or storage of any automobile, truck, motor home, camper, trailer, camper shell, boat, or other similar vehicle or equipment, when the access falls within any front or street side yard area of a lot lying within any residential zoning district, or any residential land use district of a specific plan or planned unit development, or any other property zoned or used for residential purposes. An exception to this Subsection may be granted by the Planning Director in those cases where the access is so infrequent as to cause no discernible effect on the landscaping within any front or street side yard area.

(d) This Section shall not be so construed as to permit the paving or hard surfacing of front or street side yard areas without first complying with all applicable City codes and regulations. All additional paving or hard surfacing must have Planning Department approval with regard to location and amount of paved area.

(e) This Section shall not be so construed as to prohibit the parking of vehicles on lawns or other unpaved surfaces for the purposes of washing, making emergency repairs, or on-site construction when the parking does not exceed a total of 3 hours duration within any consecutive 24-hour period.

Sec. 4-13.04 Commercial Vehicle Parking Restrictions.

(a) **Commercial Vehicle Parking in Residential Zoning Districts.** It is unlawful for the driver, owner, or operator of any commercial vehicle that exceeds a gross vehicle weight rating (GVWR) of more than 10,000 pounds (11,500-pound GVWR for pickup trucks), or any motor truck, truck tractor or trailer, or any other commercial equipment regardless of weight, to park or cause to be parked, or store or cause to be stored, any such vehicle or equipment upon any lot located within any residential zoning district, or any residential land use district of a specific plan or planned unit development, or any other property zoned or used for residential purposes.

(b) **Commercial Vehicle Parking Outside of Designated Loading Areas in Commercial Zoning Districts.** It is unlawful for the driver, owner, or operator of any commercial vehicle to park or cause to be parked, or store or cause to be stored, upon any publicly or privately owned automobile parking lot located within any commercial zoning district, or any commercial land use district of a specific plan or planned unit development, or any other property zoned or used for commercial purposes, any motor truck having a GVWR of more than 10,000 pounds, truck tractor or trailer of having a GVWR of more than 10,000 pounds, or any combination thereof, or any motor truck, truck tractor or trailer, or any combination thereof, of a size larger than 8 feet in height and/or 24 feet in length, excepting the following:

(1) The parking of said vehicles within designated loading spaces and areas approved by the City, which are screened from public view pursuant to City of Ontario Development Code Division 6.02 (Walls, Fences, and Obstructions); and

(2) The loading and unloading of goods, or to provide immediate emergency services or make emergency repairs, or for on-site construction, for a period not to exceed 3 hours duration within any consecutive 24-hour period.

Sec. 4-13.05. Right of Entry.

A peace officer or code enforcement personnel authorized to enforce parking laws and regulations shall have the right to enter onto private property to enforce the provisions of this Chapter and to issue a parking citation in accordance with CVC Section 40202.

Sec. 4-13.06. Violations.

Any person or entity violating any provision, or failing to comply with any regulation, of this Chapter, shall be subject to fines and civil penalties set forth and amended by resolution of the City Council.

SECTION 2: *Environmental Determination and Findings.* As the decision-making body for the Application, the City Council has reviewed and considered the information contained in the administrative record for the Application. Based on the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

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

(b) The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(c) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 3: *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 Application, 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 Application is consistent with the policies and criteria set forth within the ALUCP.

SECTION 4: *Concluding Facts and Reasons.* Based on the substantial evidence presented to the City Council during the above-referenced hearing, and the specific findings set forth in Sections 1 through 3, above, the City Council hereby concludes as follows:

(a) ***The proposed Amendment to the City of Ontario Municipal Code is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.*** Staff has reviewed the proposed Municipal Code Amendment and the conditions under which it will be implemented, and has determined the proposed Municipal Code provisions to be consistent with the applicable goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(b) ***The proposed Amendment to the City of Ontario Municipal Code would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The proposed Municipal Code Amendment incorporates safeguards to ensure that: [i] the purposes of the City of Ontario Municipal Code are maintained; [ii] the project will not endanger the public health, safety or general welfare; [iii] the project will not result in any significant environmental impacts; and [iv] the project will be in full conformity with the Vision, City Council Priorities and Policy Plan components of The Ontario Plan.

SECTION 5: *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described amendment to the City of Ontario Municipal Code.

SECTION 6: *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 7: *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 8: **Effective Date.** This Ordinance shall become effective 30 days following its adoption.

SECTION 9: **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 21st day of November 2017.

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. 3083 was duly introduced at a regular meeting of the City Council of the City of Ontario held November 7, 2017, and adopted at the regular meeting held November 21, 2017, 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. 3083 duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017 and that Summaries of the Ordinance were published on November 14, 2017 and November 28, 2017, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING REVISIONS TO AN EXISTING LED FREEWAY SIGN WITHIN THE VIEW CORRIDOR OF THE ONTARIO CENTER SPECIFIC PLAN, LOCATED ON THE NORTH SIDE OF INTERSTATE 10 FREEWAY BETWEEN HAVEN AND MILLIKEN AVENUES (APN: 0210-211-23)

RECOMMENDATION: That the City Council adopt a resolution approving File No. PSGN17-108, approving revisions to the freeway sign located within the view corridor of The Ontario Center Specific Plan.

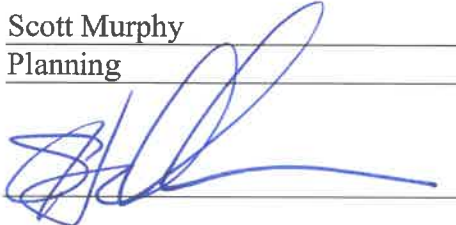
COUNCIL GOALS: Invest in the Growth and Evolution of the City

FISCAL IMPACT: None.

BACKGROUND: On February 19, 2002, the City Council approved an amendment to The Ontario Center Specific Plan that provided, amongst other things, for an additional freeway sign. The amendment called for two signs within the view corridor and one within Plaza Continental. The amendment included criteria that limited the Plaza Continental sign to 60 feet in height and a sign area of 300 square feet. The view corridor signs were limited to a maximum height of 75 feet but the allowable square footage was not specified. At the time, the square footage was to be determined by the approving authority, the City Council, as part of the review of the sign design. Ultimately, a display area of 475 square feet was approved for the LED portion of the sign.

Now, the applicant is requesting a modification to the LED freeway sign design in order to take advantage of advancements in technology with enhanced clarity/definition and to provide slightly more display area. The height of the overall sign would remain at 75 feet and the frame design will remain consistent with the current sign. The main difference is that the size of the LED display will be increased from 475 square feet to approximately 610 square feet. The proposed display will be slightly narrower (24'- 4 1/2" instead of 25 feet) and will be a little longer (24'- 11 1/2" instead of 19 feet in height). The additional sign area will be picked up at the bottom of the display in an area that is currently devoid of any signage (see *Figure 1: Proposed LED Sign*). Given the distance of the sign from the freeway and/or

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

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

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

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from Inland empire Boulevard, the impact of the additional square footage will be minimal. Also, the sign and display maintains appropriate scale and massing.

On October 24, 2017, the Planning Commission reviewed the proposed changes and recommended approval of the freeway sign revisions to the City Council.

Figure 1: Proposed LED Sign



Figure 2: Existing LED Sign





PLANNING COMMISSION STAFF REPORT

October 24, 2017

SUBJECT: A Sign Permit (File No. PSGN17-108) application for proposed revisions to an existing LED freeway sign within the view corridor of The Ontario Center Specific Plan, located on the north side of Interstate 10 Freeway between Haven and Milliken Avenues (APNs: 0210-211-23); submitted by YESCO.

PROPERTY OWNER: City of Ontario

RECOMMENDED ACTION: That the Planning Commission recommend approval to the City Council of File No. PSGN17-108, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The project site is comprised of 6.29 acres of land located at on the north side of Interstate 10 freeway between Haven and Milliken Avenues, within the Open Space designation of The Ontario Specific Plan zoning district, and is depicted in **Figure 1: Project Location**, to the right. The site is improved with landscaping, a water element, and two freeway signs, one a static sign and the other an LED display.

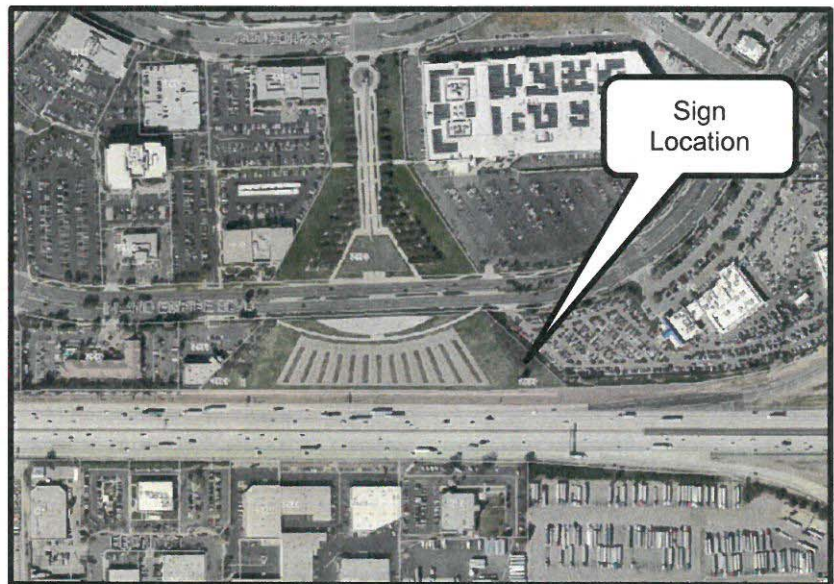
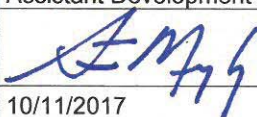


Figure 1: Project Location

PROJECT ANALYSIS:

[1] Background — On February 19, 2002, the City Council approved an amendment to The Ontario Center Specific Plan that provided, amongst other things, for an additional freeway signing, bringing the total to three freeway signs. The amendment provided two signs within the view corridor and one within Plaza Continental. The amendment included

Case Planner:	Scott Murphy Assistant Development Director	Hearing Body	Date	Decision	Action
Planning Director Approval:		DAB			
Submittal Date:	10/11/2017	ZA			
Hearing Deadline:	n/a	PC	10/24/2017	Approved	Recommend
		CC			Final

criteria that limited the Plaza Continental sign to 60 feet in height and a sign area of 300 square feet. The view corridor signs were limited to a maximum height of 75 feet but the allowable square footage was not specified. At the time, the square footage was to be determined by the approving authority, the City Council, as part of the review of the sign design.

Following the Specific Plan Amendment, the design of the signs within the view corridor were reviewed and approved by the Planning Commission and City Council. The signs were approved at the 75-foot height limited and with a sign area of 475 square feet, regardless of whether the signs were static or LED (see **Figure 2: Static Freeway Sign** and **Figure 3: Existing LED Freeway Sign**). The static sign was approved and constructed with six sign panels, providing signage for major tenants with The Ontario Center. The LED sign was approved and constructed with a display that is 25 feet in width and 19 feet in height. The LED sign is used to advertise upcoming events at Citizen's Business Bank Arena.



Figure 2: Static Freeway Sign

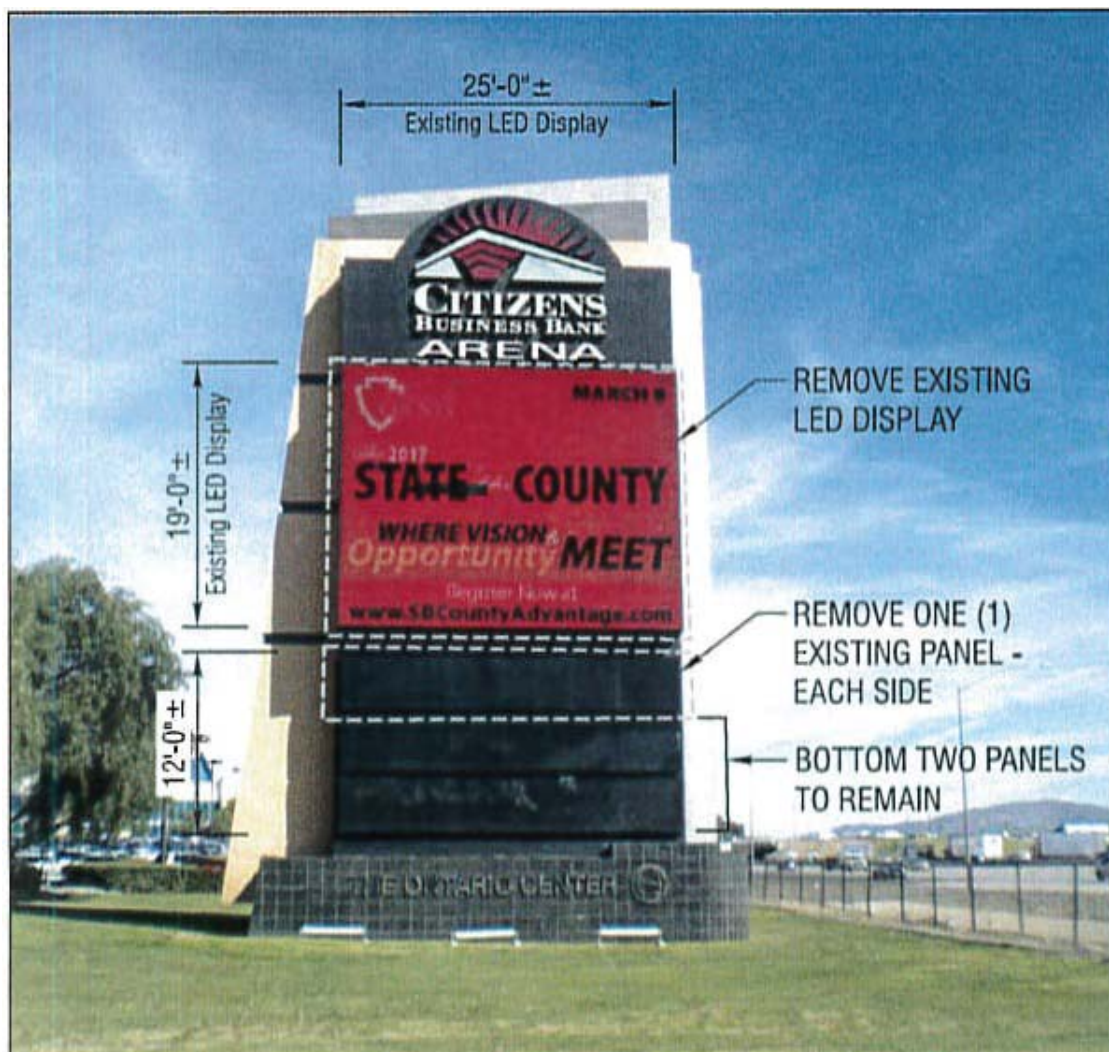


Figure 3: Existing LED Freeway Sign

[2] Revised Design — The applicant is requesting a modification to the LED freeway sign design in order to take advantage of advancements in technology with enhanced clarity/definition and to provide slightly more display area. The height of the sign would remain at 75 feet and the frame design will remain consistent with the current sign. The main difference is in the size of the LED display. The proposed display will be slightly narrower (24'- 4 1/2" instead of 25 feet) and will be a little longer (24'- 11 1/2" instead of 19 feet in height). The additional sign area will be picked up at the bottom of the display in an area that is currently devoid of any signage (see **Figure 4: Proposed LED Sign**). On paper, the revision represents an increased sign area of approximately 130 square feet. Given the distance of the sign from the freeway and/or from Inland empire Boulevard, the impact of the additional square footage will be minimal. Also, the sign maintains appropriate scale and massing.



NEW SINGLE FACE FULL COLOR LED DISPLAYS - Installed on an Angle for Better Visibility

Not to Scale

Figure 4: Proposed LED Sign

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

[1] City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods

[2] Governance.

Decision Making:

- Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.
 - G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision

[3] Policy Plan (General Plan)

Land Use Element:

- LU2-6: Infrastructure Compatibility: We require infrastructure to be aesthetically pleasing and in context with the community character.

Community Economics Element:

- CE2-1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.
- CE2-2 Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional and sustainable places that will compete well with their competition within the region.
- CE2-4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

Community Design Element:

- Goal CD1: A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

➤ CD1-1 City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing the diverse character of our existing viable neighborhoods.

➤ CD1-2 Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.

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

➤ CD2-1 Quality Architecture. We encourage all development projects to convey visual interest and character through:

- Building volume, massing, and height to provide appropriate scale and proportion;
- A true architectural style which is carried out in plan, section and elevation through all aspects of the building and site design and appropriate for its setting; and
- Exterior building materials that are visually interesting, high quality, durable, and appropriate for the architectural style.

➤ CD2-12 Site and Building Signage. We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.

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

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 project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1 – Existing Facilities) and Section 15302 (Class 2 – Replacement or Reconstruction) as the application proposes only minor alterations of existing public facilities, the sign's

structural footprint will remain the same, and the sign will maintain substantially the same purpose and capacity.

TECHNICAL APPENDIX:

Surrounding Zoning and Land Use:

	<i>Existing Land Use</i>	<i>General Plan Designation</i>	<i>Zoning Designation</i>	<i>Specific Plan Land Use</i>
<i>Site</i>	Open Space	Mixed Use		Open Space
<i>North</i>	Open Space	Mixed Use		Open Space
<i>South</i>	I-10 Freeway			
<i>East</i>	Car sales	Mixed Use		Garden Commercial
<i>West</i>	Offices	Mixed Use		Garden Commercial

RESOLUTION NO. PC17-071

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF FILE NO. PSGN17-108, A SIGN PERMIT APPLICATION FOR REVISIONS TO AN EXISTING LED FREEWAY SIGN WITHIN THE VIEW CORRIDOR OF THE ONTARIO CENTER SPECIFIC PLAN, LOCATED ON THE NORTH SIDE OF INTERSTATE 10 FREEWAY, SOUTH OF INLAND EMPIRE BOULEVARD, BETWEEN HAVEN AND MILLIKEN AVENUES, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0210-211-23.

WHEREAS, YESCO ("Applicant") has filed an Application for the approval of a Sign Permit, File No. PSGN17-108, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 6.29 acres of land generally located north of Interstate 10, south of Inland Empire Boulevard, between Haven and Milliken Avenues, at 4000 East Inland Empire Boulevard within the Open Space designation of The Ontario Center Specific Plan, and is presently improved with landscaping, a water element, and two freeway signs; and

WHEREAS, the property to the north of the Project site is within the Open Space designation of The Ontario Center Specific Plan and is developed with a water element and landscaping. The properties to the east and west are within the Garden Commercial designation of The Ontario Center Specific Plan and are developed with a used car sales facility and office buildings, respectively. The property to the south is developed with the Interstate 10 Freeway; and

WHEREAS, on February 19, 2002, the City Council approved a specific plan amendment to The Ontario Center Specific plan, providing for two freeway signs within the view corridor and one within the Plaza Continental Center; and

WHEREAS, the specific plan amendment established the maximum height for the view corridor signs at 75 feet; and

WHEREAS, the specific plan amendment did not establish a maximum sign area for the view corridor signs but left the area to the discretion of the approving authority; and

WHEREAS, the Planning Commission and City Council previously reviewed the view corridor sign design and approved its design; and

WHEREAS, the Applicant is requesting a modification to the LED freeway sign to increase the display are to approximately 610 square feet; and

WHEREAS, the additional sign area will be provided at the bottom of the sign in an area currently devoid of signage, thereby maintaining the same height and design of the existing sign; and

WHEREAS, the massing and scale of the proposed sign is in proportion to the overall sign structure; and

WHEREAS, given the distance of the sign from the freeway and/or from Inland Empire Boulevard, the impact of the additional square footage will be minimal; 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 Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make a recommendation to the City Council on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 24, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: *Environmental Determination and Findings.* As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

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

(2) The Project is categorically exempt from environmental review pursuant to Sections 15301 (Class 1, Existing Facilities) and 15302 (Class 2, Replacement or Reconstruction) of the CEQA Guidelines, which consists of minor alterations of existing public facilities, the sign's structural footprint will remain the same, and the sign will maintain substantially the same purpose and capacity; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: *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 Planning Commission 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 Planning Commission, 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 3: *Planning Commission Action.* Based upon the findings and conclusions set forth in Sections 1 through 2, above, and the accompanying staff report, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application as shown on the attached Attachment "A".

SECTION 4: *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 5: *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 6: *Certification to Adoption.* The Secretary shall certify to the adoption of the Resolution.

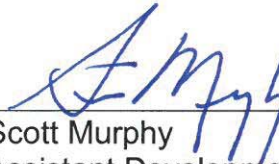
The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 24th day of October 2017, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Richard D. Delman
Planning Commission Chairman

ATTEST:



Scott Murphy
Assistant Development Director
Secretary of Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC17-071 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on October 24, 2017, by the following roll call vote, to wit:

AYES: DeDiemar, Delman, Gage, Gregorek, Reyes, Willoughby

NOES:

ABSENT: Downs

ABSTAIN:



Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:



NEW SINGLE FACE FULL COLOR LED DISPLAYS - Installed on an Angle for Better Visibility

Not to Scale

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSGN17-108, A SIGN PERMIT APPLICATION FOR REVISIONS TO AN EXISTING LED FREEWAY SIGN WITHIN THE VIEW CORRIDOR OF THE ONTARIO CENTER SPECIFIC PLAN, LOCATED ON THE NORTH SIDE OF INTERSTATE 10 FREEWAY, SOUTH OF INLAND EMPIRE BOULEVARD, BETWEEN HAVEN AND MILLIKEN AVENUES, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0210-211-23.

WHEREAS, YESCO ("Applicant") has filed an Application for the approval of a Sign Permit, File No. PSGN17-108, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 6.29 acres of land generally located north of Interstate 10, south of Inland Empire Boulevard, between Haven and Milliken Avenues, at 4000 East Inland Empire Boulevard within the Open Space designation of The Ontario Center Specific Plan, and is presently improved with landscaping, a water element, and two freeway signs; and

WHEREAS, the property to the north of the Project site is within the Open Space designation of The Ontario Center Specific Plan and is developed with a water element and landscaping. The properties to the east and west are within the Garden Commercial designation of The Ontario Center Specific Plan and are developed with a used car sales facility and office buildings, respectively. The property to the south is developed with the Interstate 10 Freeway; and

WHEREAS, on February 19, 2002, the City Council approved a specific plan amendment to The Ontario Center Specific plan, providing for two freeway signs within the view corridor and one within the Plaza Continental Center; and

WHEREAS, the specific plan amendment established the maximum height for the view corridor signs at 75 feet; and

WHEREAS, the specific plan amendment did not establish a maximum sign area for the view corridor signs but left the area to the discretion of the approving authority; and

WHEREAS, the Planning Commission and City Council previously reviewed the view corridor sign design and approved its design; and

WHEREAS, the Applicant is requesting a modification to the LED freeway sign to increase the display are to approximately 610 square feet; and

WHEREAS, the additional sign area will be provided at the bottom of the sign in an area currently devoid of signage, thereby maintaining the same height and design of the existing sign; and

WHEREAS, the massing and scale of the proposed sign is in proportion to the overall sign structure; and

WHEREAS, given the distance of the sign from the freeway and/or from Inland Empire Boulevard, the impact of the additional square footage will be minimal; 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 Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council authority to review and approve the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 24, 2017, 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 information provided, the Planning Commission voted unanimously (6-0) to recommend approval of the application to the City Council; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

SECTION 1. ***Environmental Determination and Findings.*** As the approving body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

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

(2) The Project is categorically exempt from environmental review pursuant to Sections 15301 (Class 1, Existing Facilities) and 15302 (Class 2, Replacement or Reconstruction) of the CEQA Guidelines, which consists of minor alterations of existing public facilities, the sign's structural footprint will remain the same, and the sign will maintain substantially the same purpose and capacity; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2. 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 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 3. City Council Action. Based upon the findings and conclusions set forth in Sections 1 through 2, above, and the accompanying staff report, the City Council hereby APPROVES the herein described Application as shown on the attached Attachment “A”.

SECTION 4. 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 5. ***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 6. ***Certification to Adoption.*** The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017-_____ duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:



CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
CONSENT CALENDAR

SUBJECT: PURCHASE OF A NEW REPLACEMENT POLICE HELICOPTER AND ASSOCIATED EQUIPMENT


RECOMMENDATION: That the City Council authorize the City Manager to execute a sole source purchase contract with Airbus Helicopters, of Grand Prairie, Texas, in the amount of \$3,400,000 (includes sale tax) for the purchase of a new police helicopter (Model H125); and authorize the City Manager to execute a purchase agreement in the amount \$1,050,000 (includes sales tax) with CNC Technologies, of Ontario, California, for associated avionics equipment; and authorize the City Manager to execute a purchase agreement in the amount of \$1,000,000 (includes sales tax) with Hangar One Avionics, of Carlsbad, California, for the transfer and installation of the specialized avionics equipment; and authorize a \$50,000 contingency for the overall purchase and installation project.

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

FISCAL IMPACT: The adopted budget for Fiscal Year 2017-18 includes \$5.5 million for the purchase of a replacement helicopter to be funded from the Public Safety Equipment Replacement Fund. The total purchase price of a new replacement H125 helicopter, including equipment and training for the pilots, is approximately \$5.5 million. Additional appropriations of \$50,000 are being requested to serve as a contingency with restricted use in accordance with the approved purchases. If approved, the associated appropriations adjustments will be presented in the Fiscal Year 2017-18 First Quarter Budget to the City Council.

BACKGROUND: The Police Department Air Support Unit operates three helicopters in its fleet; the older Airbus Helicopter (30NT) was purchased in 2008. The planned replacement of City aircraft is predicated on a milestone 10 years, which is prior to the requirement to perform heavy maintenance. Aging aircraft have a higher hourly operating cost due to unanticipated maintenance, and selling at the 10-year mark will avoid a 12-year inspection (paint stripped, helicopter completely taken apart) that focuses on identification of fatigue and potential failures, which could be very costly and last from 6-9 months to complete.

STAFF MEMBER PRESENTING: Brad Kaylor, Chief of Police

Prepared by: Steve Valvo
Department: Police
City Manager Approval: 

Submitted to Council/O.H.A. 11/17/2017
Approved: _____
Continued to: _____
Denied: _____

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Staff recommends the sale of N30NT with an anticipated resale value of approximately \$1 million (depending on market conditions at the time of sale). Proceeds from the sale of the aircraft will replenish the Public Safety Equipment Replacement Fund. Consistent with the City Council's prior approval of Airbus Helicopter as a sole source vendor, the acquisition of this replacement H125 helicopter would ensure standardization and maintains the current high level of public safety for the City. This acquisition would also allow for interchangeability of training, tools and equipment, as well as enhance officer safety since all airships will remain compatible. Airbus Helicopters was selected as a sole-source vendor based on the airships' effectiveness and technical features, longer useful life, higher resale value, and lower maintenance requirements as compared to helicopters made by other manufacturers.

The equipment needed to outfit the helicopter for service will be provided by CNC Technologies LLC (Planet Bids #813). CNC is a small business aviation technology and wireless communications company based in Ontario, California, that provides specialized services for law enforcement, government and military markets.

The installation of the avionics equipment will be transferred to Hangar One. Hangar One is also a Council approved sole-source vendor, based at McClellan-Palomar Airport. They are an FAA-certified repair station and an authorized sales and service center for manufacturers of avionic equipment for both law enforcement and private business aircrafts. Utilizing Hangar One for installation maintains conformity to avionic equipment in service with all aircraft operated by the City.

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER FILE NOS. PHP17-013, PHP17-015, PHP17-016, PHP17-019, PHP17-022, AND PHP17-023, HISTORIC PROPERTY PRESERVATION AGREEMENTS FOR SIX DESIGNATED HISTORIC PROPERTIES

RECOMMENDATION: That the City Council adopt resolutions approving and authorizing the City Manager to enter into Historic Property Preservation Agreements (Mills Act contracts) for the following properties:

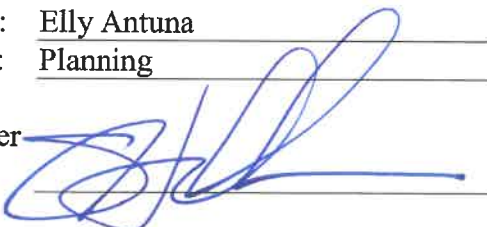
- (A) File No. PHP17-013, 206 West Armsley Square (APN: 1047-343-08),
- (B) File No. PHP17-015, 227 East G Street (APN: 1048-243-20),
- (C) File No. PHP17-016, 128 East El Morado Court (APN: 1048-242-03),
- (D) File No. PHP17-019, 318 East Princeton Street (APN: 1047-543-33),
- (E) File No. PHP17-022, 123 East H Street (APN: 1048-252-40), and
- (F) File No. PHP17-023, 205 East Princeton Street (APN: 1047-531-29).

COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The projected net impact to the City of the six proposed Mills Act contracts is a reduction in property tax revenue estimated to be \$2,133 in the first year and approximately \$21,327 over the first ten years of the contracts. In exchange for the property tax reduction, \$236,640 in private property investments will be made over a ten year period.

BACKGROUND: Six Mills Act contracts are proposed for this year, which in total represent a reinvestment of \$236,640 in private property owner funds into the City's neighborhoods in the next ten years. The contracts call for improvements to exterior finishes (window restoration, roof and wood siding repairs, and repainting of exteriors), landscaping, pavement repairs and interior finishes (refinishing

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

Prepared by: Elly Antuna
Department: Planning
City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

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hardwood floors, plaster repairs), plumbing and electrical upgrades, and installation of insulation and central HVAC systems.

A Mills Act contract is a contract between the City and a property owner whereby the property owner agrees to certain improvements that preserve the historic integrity and character of the building and keep the property in good repair. In exchange for the investments, State law requires the county tax assessor to reassess the property's value based on an alternative formula. The new assessed value may result in a significant reduction in the owner's property taxes. The Mills Act does not require investment in the property to be equal to the amount of the tax savings. The purpose is to provide a financial incentive to the owners of historic properties.

Upon City Council approval, the City Clerk will inform the San Bernardino County Assessor that the properties have entered into Mills Act contracts. The contracts are perpetual 10-year contracts with automatic annual renewals. If a property with a recorded Mills Act contract is subsequently sold, the County of San Bernardino will continue to assess the property using the alternate formula, and the new owner is required to fulfill the contractual preservation agreement. A contract can be non-renewed by either party upon written notice. If a contract is cancelled as a result of non-compliance with the conditions of the contract, a cancellation fee of 12.5% of the market value (as of the time of cancellation) is assessed.

The City currently has 66 approved Mills Act contracts and 6 proposed, for a total of 72. Of the 72 properties, six are commercial, one is multi-family residential, and 65 are single-family residential. Property tax impacts are summarized below.

	<u>Existing</u>	<u>Proposed</u>	<u>Total</u>
Number of Contracts	66	6	72
Estimated Average Annual Tax Savings to Owners	\$1,711	\$2,116	\$1,745
Estimated Annual Cost to City (first year)	\$18,975	\$2,133	\$21,108
Estimated Cost to City (over ten years)	\$189,755	\$21,327	\$211,082

As indicated, the estimated cost of the 72 Mills Act contracts over a ten-year period would be \$211,082. In exchange for this decrease in property tax revenues, approximately \$2,776,730 will be reinvested into historic buildings in Ontario neighborhoods over a ten-year period – a ratio of \$13.15 in private funds spent for every dollar the City foregoes in property tax revenue.

Each Mills Act contract is in compliance with the provision of Article 12 (commencing with Section 50280), Chapter 1, Part 1, Division 1, Title 5 of the Government Code of the State of California which establishes the Mills Act program. All properties are contributors to locally designated historic districts and are owner occupied, single-family residences.

On October 24, 2017, the Planning Commission voted unanimously (6-0) to recommend City Council approval of the six proposed Mills Act contracts.

ENVIRONMENTAL REVIEW: The applications were reviewed pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Per Section 21065 of the CEQA Guidelines, the Historic Preservation Agreement (Mills Act contract) is not considered a project. Therefore, no further environmental review is required.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-013, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH JASON SMITH, SUSAN C. SMITH, KENNETH BAESKENS, AND ROBERTA BAESKENS, FOR THE PROPERTY LOCATED AT 206 WEST ARMSLEY SQUARE (APN: 1047-343-08).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

WHEREAS, Jason and Susan C. Smith, and Kenneth and Roberta Baeskens, possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address commonly known as 206 West Armsley Square, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on March 21, 2000, the City Council of the City of Ontario designated the Property as a Contributor to the Armsley Square Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Jason Smith, Susan C. Smith, Kenneth Baeskens, and Roberta Baeskens, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement").

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 12, 2017, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC17-022, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 24, 2017, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC17-072, recommending the City Council approve the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. 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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The Howard Shattuck House, a 2,612 square foot single-family residence located at 206 West Armsley Square, was designated as a Contributor to the Armsley Square Historic District; and

(4) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. City Council Action. Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065); and

SECTION 4. 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 5. Recordation of Agreement. That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. Notification of Assessor. That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

SECTION 7. Certification to Adoption. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government
Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of November 2017, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Jason Smith, Susan C. Smith, Kenneth Baeskens and Roberta Baeskens (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(i) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Howard Shattuck House, generally located at the street address 206 Armsley Square, Ontario, CA 91762 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On March 21, 2000, the City Council of the City of Ontario designated the Historic Property as a Contributor within the Armsley Square Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and

(iv) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 21, 2017, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the “renewal date”), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its

notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Ontario
303 East "B" Street
Ontario, CA 91764

Attention: Planning Director

To Owner: Jason and Susan C. Smith
Kenneth and Roberta Baeskens
206 Armsley Square
Ontario, CA 91762

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated: _____

By: _____
City Manager

Attest

City Clerk

Approved as to Form

City Attorney

Dated: _____

By: _____
Jason Smith, Owner

Dated: _____

By: _____
Susan C. Smith, Owner

Dated: _____

By: _____
Kenneth Baeskens, Owner

Dated: _____

By: _____
Roberta Baeskens, Owner

Exhibit A: Legal Description

<p>State of California Cultural Resource Database Mills Act Contract</p> <p>EXHIBIT A HISTORIC PROPERTY PRESERVATION AGREEMENT Legal Description</p>	<p>City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov</p>
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File No: PHP17-013

The property located at: 206 Amsley Square
Ontario, CA 91762

is legally described as: TRACT 1780 E 1/2 LOT 33 AND LOT 34

APN: 104734308

Exhibit B: Property Maintenance

State of California Cultural Resource Database Mills Act Contract	City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov
EXHIBIT B HISTORIC PROPERTY PRESERVATION AGREEMENT Property Maintenance	

Address: 206 W Armsley Square
Ontario, CA 91762

APN: 104734308

File No: PHP17-013

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance - Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Proposed Improvements

<p>State of California Cultural Resource Database Mills Act Contract</p> <p style="text-align: center;">EXHIBIT C HISTORIC PROPERTY PRESERVATION AGREEMENT Proposed Improvements</p>	<p>City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov</p>
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Address: 206 W Armsley Square
 Ontario, CA 91762

APN: 104734308

File No: PHP17-013

Improvements Information:

	Description:	Completed?
Year 2018:	Replace and paint water damaged fascia boards before installing rain gutters. Strip and repaint all western facing lower level windows. Perform an Energy audit. Landscape front of house, plant boxwood hedge in rock planter and other plants, install drip irrigation system, and replace tree at the west end of the property.	<input type="checkbox"/>
Year 2019:	Install gutters around the garage. Replace sprinklers in front yard for better efficiency and coverage. Replace metal pipes.	<input type="checkbox"/>
Year 2020:	Fabricate 20 screens for windows to recreate original period look. These will be wood frame painted to match, exterior trim. Windows are of various sizes. Landscape area at the east of the house with native and drought tolerant plants. Retrofit broken and inefficient sprinkler system with a drip system.	<input type="checkbox"/>
Year 2021:	First floor repair sash cords with counter weights on 13 original windows. Paint as needed.	<input type="checkbox"/>
Year 2022:	Second floor repair sash cords with counter weights on 11 original windows. Paint as needed.	<input type="checkbox"/>
Year 2023:	Paint, seal and add weatherproofing to exterior basement door. Remove old cables, telecommunications wire, and non-energized electrical wire from exterior. Seal holes as necessary. Paint iron fixtures. Chimney work. Rehab the chimney flue, mechanism, and top spark arrestor.	<input type="checkbox"/>
Year 2024:	Replace 2 man-doors and framing where water damage has taken place on garage. Doors will be replaced with solid wood doors that match the character of the building. Replace one interior door.	<input type="checkbox"/>
Year 2025:	Clean out and add insulation to unfinished attic space on eastern part of house. Replace lawn with drought tolerant landscaping and irrigation in the most northeast parkway along Charmore street.	<input type="checkbox"/>
Year 2026:	Repair roof leak in sun room.	<input type="checkbox"/>
Year 2027:	Repaint the properties perimeter wall that spans the alley, continues along Charmore, and connects to house on Armsley. Repaint the exterior of the home.	<input type="checkbox"/>

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-015, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH EELISHE TAYLOR AND GREGORY DEL FANTE, FOR THE PROPERTY LOCATED AT 227 EAST G STREET (APN: 1048-243-20).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance: and

WHEREAS, Eelische Taylor and Gregory Del Fante possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address commonly known as 227 East G Street, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on July 16, 2002, the City Council of the City of Ontario designated the Property as a Contributor to the El Morado Court Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Eelische Taylor and Gregory Del Fante, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement").

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 12, 2017, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC17-023, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 24, 2017, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC17-073, recommending the City Council approve the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. 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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The Charles E. Bingle House, a 1,345 square foot single-family residence located at 227 East G Street, was designated as a Contributor to the El Morado Court Historic District; and

(4) In 2010, a 493 square foot addition to the house was constructed which does not qualify for Mills Act assessment under the Historic Property Preservation Agreement by the San Bernardino County Assessor; and

(5) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065); and

SECTION 4. ***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 5. ***Recordation of Agreement.*** That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. ***Notification of Assessor.*** That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

SECTION 7. ***Certification to Adoption.*** The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017-_____ duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government
Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of November 2017, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Gregory Del Fante and Eelische Taylor (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(i) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Charles E. Bingle House, generally located at the street address 227 East G Street, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On July 16, 2002, the City Council of the City of Ontario designated the Historic Property as a Contributor within the El Morado Court Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and,

(iv) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 21, 2017, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to Owner of non-renewal. If either City or Owner serves notice to the other of

non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach or default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Ontario
303 East "B" Street
Ontario, CA 91764

Attention: Planning Director

To Owner: Gregory Del Fante and Eelische Taylor
227 East G Street
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated: _____

By: _____
City Manager

Attest

City Clerk

Approved as to Form

City Attorney

Dated: _____

By: _____
Gregory Del Fante, Owner

Dated: _____

By: _____
Eelische Taylor, Owner

Exhibit A: Legal Description

<p>State of California Cultural Resource Database Mills Act Contract</p> <p>EXHIBIT A HISTORIC PROPERTY PRESERVATION AGREEMENT Legal Description</p>	<p>City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov</p>
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File No: PHP17-015

The property located at: 227 E G Street
Ontario, CA 91764
is legally described as:

APN: 104824320

Exhibit B: Property Maintenance

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT B HISTORIC PROPERTY PRESERVATION AGREEMENT

Property Maintenance

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

Address: 227 E G Street
Ontario, CA

APN: 104824320

File No: PHP17-015

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance - Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Proposed Improvements

State of California Cultural Resource Database Mills Act Contract EXHIBIT C HISTORIC PROPERTY PRESERVATION AGREEMENT Proposed Improvements	City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov
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Address: 227 E G Street
Ontario, CA

APN: 104824320

File No: PHP17-015

Improvements Information:

Description:	Completed?
Year 2018: Energy audit. Upgrade electrical panel.	<input type="checkbox"/>
Year 2019: Repair and replace cement floor in garage where cracked.	<input type="checkbox"/>
Year 2020: Repaint exterior siding of home and garage. Repair siding as needed in preparation of paint. Replace exterior of foundation with appropriate material.	<input type="checkbox"/>
Year 2021: Refurbish garage framing inside/out. Repair original doors (man door and garage door) and wood siding.	<input type="checkbox"/>
Year 2022: Remove stucco overspray from exposed eaves.	<input type="checkbox"/>
Year 2023: New roof on house and detached garage.	<input type="checkbox"/>
Year 2024: Tree stump removal in backyard.	<input type="checkbox"/>
Year 2025: Front and rear yard landscaping and irrigation.	<input type="checkbox"/>
Year 2026: Replace wood on porch (flooring) and repair/reinforce where porch is sagging.	<input type="checkbox"/>
Year 2027: Tree trimming by certified arborist.	<input type="checkbox"/>

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-016, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH DANIEL AND JARED GARCIA, FOR THE PROPERTY LOCATED AT 128 EAST EL MORADO COURT (APN: 1048-242-03).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

WHEREAS, Daniel and Jared Garcia possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address commonly known as 128 East El Morado Court, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on July 16, 2002, the City Council of the City of Ontario designated the Property as a Contributor to the El Morado Court Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Daniel and Jared Garcia, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement").

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 12, 2017, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC17-024, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 24, 2017, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC17-074, recommending the City Council approve the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. 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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The Dr. Jerome Titus House, a 2,244 square foot single-family residence located at 128 East El Morado Court, was designated as a Contributor to the El Morado Court Historic District; and

(4) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. City Council Action. Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065); and

SECTION 4. 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 5. Recordation of Agreement. That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. Notification of Assessor. That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

SECTION 7. Certification to Adoption. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017-_____ duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government
Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of November 2017, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Daniel R. and Jared Garcia (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(i) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Dr. Jerome Titus House, generally located at the street address 128 East El Morado Court, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On July 16, 2002, the City Council of the City of Ontario designated the Historic Property as a Contributor within the El Morado Court Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and,

(iv) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 21, 2017, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the “renewal date”), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its

notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach or default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Ontario
303 East "B" Street
Ontario, CA 91764

Attention: Planning Director

To Owner: Daniel R. and Jared Garcia
128 East El Morado Court
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated: _____

By: _____
City Manager

Attest

City Clerk

Approved as to Form

City Attorney

Dated: _____

By: _____
Daniel R. Garcia, Owner

Dated: _____

By: _____
Jared Garcia, Owner

Exhibit A: Legal Description

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT A HISTORIC PROPERTY PRESERVATION AGREEMENT

Legal Description

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

File No: PHP17-016

The property located at: 128 E El Morado Court
Ontario, CA 91764

is legally described as:

APN: 104824203

Exhibit B: Property Maintenance

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT B HISTORIC PROPERTY PRESERVATION AGREEMENT

Property Maintenance

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420

<http://www.ontarioca.gov>

Address: 128 E El Morado Court
Ontario, CA

APN: 104824203

File No: PHP17-016

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance - Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Proposed Improvements

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT C HISTORIC PROPERTY PRESERVATION AGREEMENT

Proposed Improvements

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

Address: 128 E El Morado Court
Ontario, CA

APN: 104824203

File No: PHP17-016

Improvements Information:

Description:	Completed?
Year 2018: Energy audit. Repair 4 wood framed windows and screens.	<input type="checkbox"/>
Year 2019: Repair 4 wood framed windows and screens.	<input type="checkbox"/>
Year 2020: Repair 4 wood framed windows and screens. Remove moss from stone on front patio.	<input type="checkbox"/>
Year 2021: Repair 4 wood framed windows and screens. Refinish hardwood floors in living and dining rooms.	<input type="checkbox"/>
Year 2022: Repair 4 wood framed windows and screens.	<input type="checkbox"/>
Year 2023: Repair 4 wood framed windows and screens.	<input type="checkbox"/>
Year 2024: Repair or replace main bathroom tile. Refurbish original tub and pedestal sink. Update plumbing for toilet. Restore built-in cabinets and mirror in bathroom.	<input type="checkbox"/>
Year 2025: New roof for main house and detached garage.	<input type="checkbox"/>
Year 2026: Refinish original handrails. Repair or replace damaged shingle siding. Repair damaged siding under window A/C unit at rear.	<input type="checkbox"/>
Year 2027: Refinish exterior doors (rear door to backyard, upstairs French doors, and upstairs patio door)	<input type="checkbox"/>

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-019, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH MARK RIVAS, FOR THE PROPERTY LOCATED AT 318 EAST PRINCETON STREET (APN: 1047-543-33).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

WHEREAS, Mark Rivas possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address commonly known as 318 East Princeton Street, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on October 17, 2017, the City Council of the City of Ontario designated the Property as Local Landmark No. 97 pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Mark Rivas, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement").

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 12, 2017, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC17-025, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 24, 2017, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC17-075, recommending the City Council approve the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. 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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The Fred and Verna Clapp House, a 1,218 square foot single-family residence located at 318 East Princeton Street, was designated as Local Landmark No. 97; and

(4) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. City Council Action. Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065); and

SECTION 4. 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 5. Recordation of Agreement. That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. Notification of Assessor. That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

SECTION 7. Certification to Adoption. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017-_____ duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government
Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of November 2017, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Mark Rivas (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(i) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Fred and Verna Clapp House, generally located at the street address 318 East Princeton Street, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On July 18, 2000, the City Council of the City of Ontario designated the Historic Property as Local Landmark No. 97 pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and,

(iv) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 21, 2017, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the “renewal date”), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its

notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Ontario
303 East "B" Street
Ontario, CA 91764

Attention: Planning Director

To Owner: Mark Rivas
318 East Princeton Street
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated: _____

By: _____
City Manager

Attest

City Clerk

Approved as to Form

City Attorney

Dated: _____

By: _____
Mark Rivas, Owner

Exhibit A: Legal Description

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT A HISTORIC PROPERTY PRESERVATION AGREEMENT

Legal Description

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

File No: PHP17-019

The property located at: 318 East Princeton Street
Ontario, CA 91764

is legally described as: ONTARIO COLONY LANDS COM 33 FT E AND 225 FT S OF NW COR
LOT 800 TH E 195 FT TH N 200 FT TH W 15 FT TH S 100 FT TH W TO A
PT WHICH IS 115 FT E OF W LI SD LOT TH S 75 FT TH W 115 FT TH S
25 FT TO POB

APN: 104754333

Exhibit B: Property Maintenance

State of California Cultural Resource Database
Mills Act Contract

EXHIBIT B HISTORIC PROPERTY PRESERVATION AGREEMENT
Property Maintenance

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

Address: 318 E Princeton Street
Ontario, CA 91764

APN: 104754333

File No: PHP17-019

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance - Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Proposed Improvements

State of California Cultural Resource Database Mills Act Contract	City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov
EXHIBIT C HISTORIC PROPERTY PRESERVATION AGREEMENT Proposed Improvements	

Address: 318 E Princeton Street
Ontario, CA 91764

APN: 104754333

File No: PHP17-019

Improvements Information:

Description:	Completed?
Year 2018: Tree trimming by certified arborist.	<input type="checkbox"/>
Year 2019: Install new water main and meter.	<input type="checkbox"/>
Year 2020: Install drip irrigation system throughout property.	<input type="checkbox"/>
Year 2021: Tree trimming by certified arborist.	<input type="checkbox"/>
Year 2022: Replace existing outside air conditioner condenser with new condenser and duct work.	<input type="checkbox"/>
Year 2023: Insulate attic.	<input type="checkbox"/>
Year 2024: Repair or replace fascia board, exposed rafters, and board and batten siding where termite and water damage is present.	<input type="checkbox"/>
Year 2025: Replace existing aluminum bedroom windows (installed during the 1970s) with appropriate multi-pane wood windows.	<input type="checkbox"/>
Year 2026: Tree trimming by certified arborist.	<input type="checkbox"/>
Year 2027: Re-roof detached storage shed.	<input type="checkbox"/>

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-022, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH ANGEL AND PAIGE HERNANDEZ, FOR THE PROPERTY LOCATED AT 123 EAST H STREET (APN: 1048-252-40).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

WHEREAS, Angel and Paige Hernandez possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address commonly known as 123 East H Street, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on July 16, 2002, the City Council of the City of Ontario designated the Property as a Contributor to the El Morado Court Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Angel and Paige Hernandez, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement").

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 12, 2017, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC17-026, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 24, 2017, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC17-076, recommending the City Council approve the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. 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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The C. A. Traphagen House, a 2,076 square foot single-family residence located at 123 East H Street, was designated as a Contributor to the El Morado Court Historic District; and

(4) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065); and

SECTION 4. ***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 5. ***Recordation of Agreement.*** That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. ***Notification of Assessor.*** That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

SECTION 7. ***Certification to Adoption.*** The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017-_____ duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government
Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of November 2017, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Angel and Paige Hernandez (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(i) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the C. A. Traphagen House, generally located at the street address 123 East H Street, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On July 16, 2002, the City Council of the City of Ontario designated the Historic Property as a Contributor within the El Morado Court Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and

(iv) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 21, 2017, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the “renewal date”), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to Owner of non-renewal. If either City or Owner serves notice to the other of

non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Ontario
303 East "B" Street
Ontario, CA 91764

Attention: Planning Director

To Owner: Angel and Paige Hernandez
123 East H Street
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated: _____

By: _____
City Manager

Attest

City Clerk

Approved as to Form

City Attorney

Dated: _____

By: _____
Angel Hernandez, Owner

Dated: _____

By: _____
Paige Hernandez, Owner

Exhibit A: Legal Description

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT A HISTORIC PROPERTY PRESERVATION AGREEMENT

Legal Description

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

File No: PHP17-022

The property located at: 123 East H Street
Ontario, CA 91764

is legally described as:

APN: 104825240

Exhibit B: Property Maintenance

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT B HISTORIC PROPERTY PRESERVATION AGREEMENT
Property Maintenance

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

Address: 123 E H Street
Ontario, CA

APN: 104825240

File No: PHP17-022

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance - Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Proposed Improvements

State of California Cultural Resource Database

Mills Act Contract

EXHIBIT C HISTORIC PROPERTY PRESERVATION AGREEMENT
Proposed Improvements

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
Fax: 9093952420
<http://www.ontarioca.gov>

Address: 123 E H Street
Ontario, CA

APN: 104825240

File No: PHP17-022

Improvements Information:

Description:	Completed?
Year 2018: Landscaping and irrigation (front and rear yard). Tree trimming by certified arborist. Energy audit.	<input type="checkbox"/>
Year 2019: Interior paint and plaster repair as needed. Refinish hardwood floors in living, dining and bedrooms.	<input type="checkbox"/>
Year 2020: Repair 6 windows (reglaze and refinish) at dining room and kitchen.	<input type="checkbox"/>
Year 2021: Paint exterior. Restore exterior balcony posts and railing.	<input type="checkbox"/>
Year 2022: Repair or replace 3 French doors and screens at living and dining rooms. Repair wood framing.	<input type="checkbox"/>
Year 2023: Repair (reglaze and refinish) 7 windows in living, office and master bedroom. Refinish door at office.	<input type="checkbox"/>
Year 2024: Refinish front door.	<input type="checkbox"/>
Year 2025: Repair (reglaze and refinish) 9 windows in upstairs bedrooms and bathroom. Refinish door at balcony.	<input type="checkbox"/>
Year 2026: Repair and/or replace tile with like-in-kind at entry where original concrete-stamped tile has cracked. Installation of new subfloor if necessary.	<input type="checkbox"/>
Year 2027: Weather-strip front door.	<input type="checkbox"/>

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP17-023, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT WITH VINCENT POSTOVOIT AND ROSEMARY SALCES, FOR THE PROPERTY LOCATED AT 205 EAST PRINCETON STREET (APN: 1047-531-29).

WHEREAS, California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

WHEREAS, Vincent Postovoit and Rosemary Salces possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address commonly known as 205 East Princeton Street, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on July 18, 2000, the City Council of the City of Ontario designated the Property as a Contributor to the College Park Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Vincent Postovoit and Rosemary Salces, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement").

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed;

WHEREAS, on October 12, 2017, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC17-027, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 24, 2017, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC17-077, recommending the City Council approve the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

(2) The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. 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 above, the City Council hereby concludes as follows:

(1) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance; and

(2) Pursuant to California Government Code Section 50280, et seq., qualified historical properties are designated historic landmarks, contributing structures within designated historic districts, and properties listed on the National Register of Historic Places or the California Register of Historic Resources; and

(3) The Hugh Crawford House, a 2,339 square foot single-family residence located at 205 East Princeton Street, was designated as a Contributor to the College Park Historic District; and

(4) The Applicant has set forth a work program for this specific property to ensure the preservation of this historic resource that qualifies under the guidelines and standards set by the State of California.

SECTION 3. City Council Action. Based upon the findings and conclusions set forth in Sections 1 and 2 above, THE CITY COUNCIL APPROVES AND RATIFIES the historic property preservation agreement and authorizes the City Manager to execute the agreement, which is subject to the provisions of the City's Development Code (Sec. 4.02.065); and

SECTION 4. 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 5. Recordation of Agreement. That the City Clerk of the City of Ontario, California, shall cause the Historic Preservation Agreement to be recorded in the office of the County Recorder of San Bernardino County.

SECTION 6. Notification of Assessor. That the City Clerk of the City of Ontario, California, shall notify the San Bernardino County Assessor in writing that the property has entered into a Preservation Agreement within 30 days of the recordation of the contract.

SECTION 7. Certification to Adoption. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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. 2017-_____ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017-_____ duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

RECORDING REQUESTED BY
And When
RECORDED MAIL TO:

City Clerk, City of Ontario
303 East "B" Street
Ontario, CA 91764

Exempt Recording Fees Pursuant to Government
Code Section 6103 & 27383

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of November 2017, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Vincent Postvoit and Rosemary Salces (hereinafter referred to as the "Owner").

WITNESSETH:

A. Recitals.

(I) California Government Code Section 50280, et seq., authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance;

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Hugh Crawford House, generally located at the street address 205 East Princeton Street, Ontario, CA 91764 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference; and

(iii) On July 18, 2000, the City Council of the City of Ontario designated the Historic Property as a Contributor within the College Park Historic District pursuant to the terms and provisions of Title 9, Chapter 1, Chapter 4 of the Ontario Municipal Code; and,

(iv) The City and Owner, for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 21, 2017, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the “renewal date”), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew the Agreement, Owner or City shall serve written notice of non-renewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipts by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its

notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

3. Fees. Prior to recordation the applicant shall pay the applicable fee in effect at the time recordation is requested.

4. Standards for Historical Property. During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements and restrictions:

A. Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto, marked as Exhibits "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement.

B. Owner shall, where necessary, restore and rehabilitate the property according to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Rehabilitation Standards, the State Historical Building Code, and the Ontario Development Code and in accordance with the attached schedule of potential improvements, drafted by the applicant and approved by the City Council, attached hereto as Exhibit "C".

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration, rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

D. Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization, and the City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

5. Provision of Information of Corporation. Owner hereby agrees to furnish City with any and all information requested by the City, which may be necessary or advisable to determine compliance with the terms and provision of this Agreement.

6. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 4(B) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, et seq.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

8. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, reservations and restriction as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

9. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Ontario
303 East "B" Street
Ontario, CA 91764

Attention: Planning Director

To Owner: Vincent Postovoit and Rosemary Salces
205 East Princeton Street
Ontario, CA 91764

10. General Provisions.

A. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

C. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

D. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

E. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Bernardino.

12. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

CITY OF ONTARIO

Dated: _____

By: _____
City Manager

Attest

City Clerk

Approved as to Form

City Attorney

Dated: _____

By: _____
Vincent Postovoit, Owner

Dated: _____

By: _____
Rosemary Salces, Owner

Exhibit A: Legal Description

State of California Cultural Resource Database
Mills Act Contract

EXHIBIT A HISTORIC PROPERTY PRESERVATION AGREEMENT
Legal Description

City of Ontario
Planning Department
303 East B Street
Ontario, CA 91764
Phone: 9093952036
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<http://www.ontarioca.gov>

File No: PHP17-023

The property located at: 205 East Princeton Street
Ontario, CA 91764

is legally described as: ONTARIO COLONY LANDS W 70 FT E 334.98 FT N 260 FT S 293 FT
LOT 774

APN: 104753129

Exhibit B: Property Maintenance

<p>State of California Cultural Resource Database Mills Act Contract</p> <p>EXHIBIT B HISTORIC PROPERTY PRESERVATION AGREEMENT Property Maintenance</p>	<p>City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov</p>	
<p>Address: 205 E Princeton Street Ontario, CA 91764</p>	<p>APN: 104753129</p>	<p>File No: PHP17-023</p>

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, and windows;
2. Scrap lumber, junk, trash or debris;
3. Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers, or similar items;
4. Stagnant water or excavations, including unmaintained pools or spas;
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

The property owner shall also comply with the provisions of the Duty to Keep in Good Repair Section of the Historic Preservation Ordinance (Sec. 9-1.7.01.045 of the Ontario Development Code) and all other applicable provisions of the City's Property Appearance - Nuisance Ordinance (Chapter 22 of Title 5 of the Ontario Municipal Code, Commencing at Sec. 5-22.02).

Exhibit C: Proposed Improvements

State of California Cultural Resource Database Mills Act Contract	City of Ontario Planning Department 303 East B Street Ontario, CA 91764 Phone: 9093952036 Fax: 9093952420 http://www.ontarioca.gov
EXHIBIT C HISTORIC PROPERTY PRESERVATION AGREEMENT Proposed Improvements	

Address: 205 E Princeton Street
Ontario, CA 91764

APN: 104753129

File No: PHP17-023

Improvements Information:

Description:	Completed?
Year 2018: Refinish hardwood floors, entire house. Resurface garage floor. Perform Energy Audit. Paint interior and repair plaster as needed.	<input type="checkbox"/>
Year 2019: Grade backyard. Relocate existing citrus trees. Install irrigation in rear yard.	<input type="checkbox"/>
Year 2020: Electrical upgrades, upgrade panel and wiring in house.	<input type="checkbox"/>
Year 2021: Upgrade plumbing where necessary to copper	<input type="checkbox"/>
Year 2022: Repair window and door wood trim. Repair 7 windows as necessary (replace broken glass, repair hardware). Replace missing and repair existing interior screens as necessary.	<input type="checkbox"/>
Year 2023: Seal window surrounds to reduce energy loss	<input type="checkbox"/>
Year 2024: Install insulation in roof and possibly basement	<input type="checkbox"/>
Year 2025: Upstairs bedrooms window restoration. Remove window cooling units and replace hung windows with original casement windows still on site. Install central HVAC and related ductwork.	<input type="checkbox"/>
Year 2026: Repair pull down window screens in breakfast nook. Repair front door knob.	<input type="checkbox"/>
Year 2027: Paint exterior eaves and trim, entire exterior if necessary, repair stucco as needed.	<input type="checkbox"/>

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER A RESOLUTION CERTIFYING THE ENVIRONMENTAL IMPACT REPORT, INCLUDING THE ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING PROGRAM, AND AN ORDINANCE FOR FILE NO. PSP15-002, A SPECIFIC PLAN (ARMSTRONG RANCH) REQUEST TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR 189.8 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 10-ACRE ELEMENTARY SCHOOL SITE. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, CUCAMONGA CREEK CHANNEL TO THE EAST, AND VINEYARD AVENUE TO THE WEST (APNS:0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45 0218-111-49 AND 0218-111-50)

RECOMMENDATION: That the City Council adopt a resolution approving the Environmental Impact Report prepared for File No. PSP15-002, including the adoption of a Statement of Overriding Considerations and the Mitigation Monitoring Program, and introduce and waive further reading of an ordinance approving the Armstrong Ranch Specific Plan (File No. PSP15-002).

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 the New Model Colony

FISCAL IMPACT: Adoption of the Armstrong Ranch Specific Plan would result in both short and long term fiscal impacts to the City. Short term impacts include infrastructure improvements to serve the

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

Prepared by: Lorena Mejia
Department: Planning
City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

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new residential development. The cost of these improvements is included in the Nexus Study and Development Impact Fees previously adopted by the City Council. The developer will be required to install improvements or pay the Development Impact Fees (“DIF”) associated with the various improvements. Long term fiscal impacts include the ongoing operations and maintenance services (police, fire, maintenance, etc.) necessary to serve the new development. While the development will result in increased property tax revenue, the increase is not sufficient to cover the total cost of services associated with the project. To address this shortfall, the developer will be required to form and/or join a Community Facilities District (“CFD”) to cover the additional public service costs.

BACKGROUND: The Ontario Plan (TOP) Policy Plan (General Plan) provides the basic framework for development within the 8,200-acre area commonly referred to as Ontario Ranch. The Policy Plan requires City Council approval of a Specific Plan for new developments within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve cohesive, unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure (including drainage, sewer, and water facilities), provision for public services (including parks and schools), and urban design and landscape plans.

ARMSTRONG RANCH SPECIFIC PLAN: The Armstrong Ranch Specific Plan (File No. PSP15-002) serves to implement the City’s Policy Plan for the project site and provides zoning regulations for development of the project site by establishing permitted land use, development standards, infrastructure requirements, and implementation requirements for the development of 189.8 acres within the Specific Plan boundaries. The Specific Plan establishes a comprehensive set of development regulations and design guidelines to regulate site planning, landscaping, and architectural character within the community, ensuring that excellence in community design is achieved during the project development. The Armstrong Ranch Specific Plan establishes the procedures and requirements to approve new development within the project site to ensure TOP goals and policies are achieved.

The Armstrong Ranch Specific Plan proposes a land use plan that includes six residential Planning Areas and one future elementary school site (see *Exhibit “A”: Armstrong Ranch Specific Plan - Land Use Plan*). The land use plan concept is based on traditional neighborhood design principals and concepts that include pedestrian and bicycle connectivity, a traditional grid street network, and a variety of housing types and architectural styles. The Specific Plan is comprised of the following land use categories:

- Residential – 178.2 gross acres
- Elementary School – 11.6 gross acres

The Armstrong Ranch Specific Plan proposes the development of up to 891 residential dwelling units (see *Exhibit “B”: Armstrong Ranch Land Use Plan Summary Table*). Planning Areas 1 thru 6 are comprised of Low Density Residential at 4.8 - 5.2 dwelling units per gross acres (average 5.0 dwelling units per gross acres) and Planning Area 7 is a 11.6-acre future elementary school site.

The Residential Planning Areas includes a variety of housing products that respond to a variety of lifestyles, such as singles, families, executives and “empty nesters”. The Specific Plan offers a variety of low density, single family detached residential products (conventional, Z-Lot and cluster) and multi-family (duplex townhomes and rowtowns) residential products.

Community Design/Vision — The vision for Armstrong Ranch is to incorporate and acknowledge the legacy of John Armstrong (an early pioneer of commercial nursery farming in Southern California that made landscape and plant materials available to consumers throughout the region) by designing a new residential community oriented towards outdoor living. The Armstrong Ranch Specific Plan is organized into individual neighborhoods designed around a densely landscaped themed street system encouraging walking that leads to parks centrally located within each neighborhood.

Residential Architectural Styles — The architectural styles for the Specific Plan area have been selected in order to be reflective of older neighborhoods of historic Ontario as well as to accommodate innovative transitional architectural and modern architectural influences.

Circulation Plan — The primary entrances into the Armstrong Ranch community will occur from Riverside Drive on the north, Vineyard Avenue on the west and Chino Avenue on the south. The primary north-south street through the community will be Hellman Avenue, which will connect Riverside Drive and Chino Avenue. This north-south connection will provide internal access and connectivity between residential areas and the future elementary school site. Street traffic calming will be introduced by incorporating loop streets around parks, landscaped areas adjacent to streets, and narrowed intersections to influence a driver's peripheral vision and encourage drivers to proceed slowly throughout the community.

Landscape Plan — Careful attention has been given to creating an appropriate and appealing landscape architectural design, which will compliment, enhance and reinforce the vision for Armstrong Ranch through entry monumentation, enhanced/expanded parkways, and accent themed plantings.

Parks, Paseos and Trails — The centrally located, two-acre Armstrong Park is accessible from adjacent neighborhood streets/sidewalks and the proposed rose-themed Charlotte Armstrong Trail that bisects the community and extends from Vineyard Avenue to the future elementary school site. Pocket parks will be developed within each residential Planning Area and have a minimum area of a ¼-acre. Typical recreational improvements for pocket parks may include: tot lots, picnic and barbecue facilities, multipurpose trails, rose gardens, water features, gardens and/or informal play areas.

Multi-use trails are an integral element to creating accessibility and mobility within Armstrong Ranch to the surrounding community. A master planned, multi-use trail is located along the north side of Chino Avenue, adjacent to the project site that connects to the Cucamonga Creek Trail to the east of the project site. Additionally, a pedestrian bridge is proposed over Cucamonga Creek Channel to provide safe connectivity to areas to the east and a pedestrian access to the future elementary school site.

Class II bike lanes are planned on both sides of Riverside Drive and Hellman Avenue. The bike trail system planned as part of Armstrong Ranch connects all residential neighborhoods to one another and to the elementary school.

Infrastructure and Services — Backbone infrastructure to serve all areas of Armstrong Ranch will be installed by the developer(s) in accordance with the NMC Master Plans for streets, water (including recycled water), sewer, storm drain, and fiber optic facilities. Natural gas will be provided by the Gas Company and electricity by SCE. Development of the project requires the installation by the developer of all infrastructure necessary to serve the project as if it were a standalone development.

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

California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local General Plan. Specific plans must demonstrate consistency in regulations, guidelines, and programs with the goals and policies set forth in the General Plan. The Armstrong Ranch Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy analysis in *Section 9, "General Plan Consistency,"* of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the Policy Plan goals.

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.

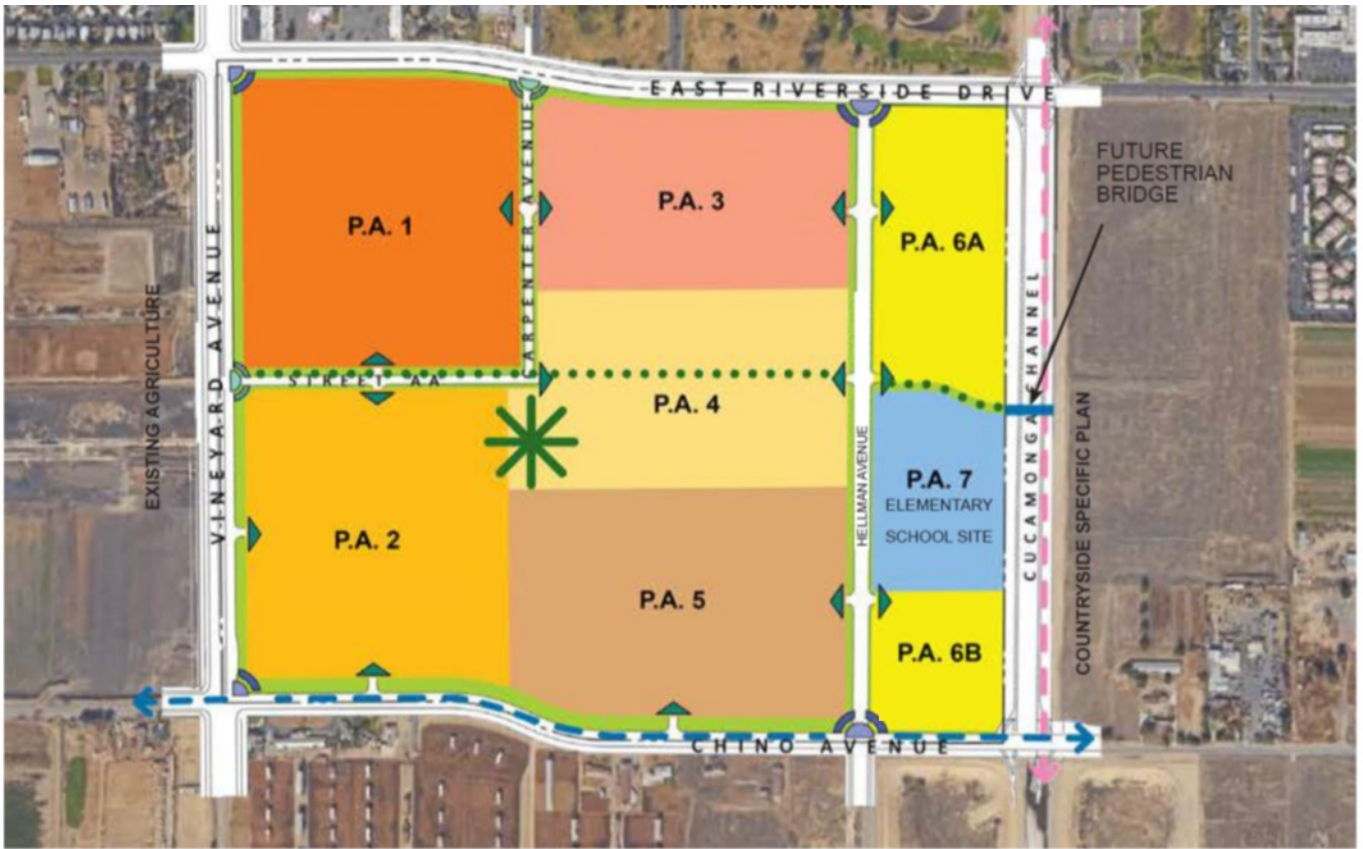
ENVIRONMENTAL REVIEW: On January 27, 2010, the City adopted The Ontario Plan (TOP) and certified the accompanying Environmental Impact Report (SCH# 2008101140). TOP serves as the City's new General Plan for the entire City, including the NMC (now referred to as Ontario Ranch). TOP Environmental Impact Report (EIR) identified many areas that might have a potentially significant impact on the environment. These areas included: 1) Aesthetics; 2) Biological Resources; 3) Geology and Soils; 4) Hazards and Hazardous Materials; 5) Hydrology and Water Quality; 6) Land Use and Planning; 7) Mineral Resources; 8) Population and Housing; 9) Public Services; 10) Recreation; and 11) Utilities and Service Systems. Through the EIR process, these potential impacts were analyzed, revisions were incorporated into the plan and/or mitigation measures were identified that reduced the potential environmental impacts to a level that was less than significant. In some cases, however, the impacts could not be reduced a level of less than significant and a Statement of Overriding Considerations was adopted. These areas included 1) Agriculture; 2) Air Quality; 3) Cultural Resources; 4) Global Climate Change; 5) Noise; and 6) Transportation and Traffic.

Even though an EIR was prepared for TOP, the analyses focused on the program or "big picture" impacts associated with development. With the submittal of the Armstrong Ranch Specific Plan, staff is charged with evaluating the potential impacts of development at the project level. An Initial Study was prepared for the project and determined that an EIR should be prepared for the Armstrong Ranch Specific Plan. The Armstrong Ranch Specific Plan EIR (SCH# 2006111009) evaluated 15 areas of potential impact and identified mitigation measures and/or revisions to the plan to lessen the level of significance. Of the 15 areas considered by the EIR, all but air quality and agriculture resources could not be reduced to less than significant, resulting in these two impacts remaining as potentially significant and unavoidable. While mitigation of all potential impacts to a level of less than significant is desirable, the fact that two areas will remain significant and unavoidable is not unexpected. The identification of these areas as significant and unavoidable validates the work previously completed for TOP. Staff believes that the benefits of the proposed development outweigh the potential impacts associated with it.

Therefore, staff recommends the City Council certify the EIR, including the Statement of Overriding Considerations and Mitigation Monitoring Program for the project.

PLANNING COMMISSION REVIEW: On October 24, 2017, the Planning Commission conducted a public hearing and voted unanimously (6-0) to recommend City Council certification of the Armstrong Ranch Specific Plan Environmental Impact Report (SCH#2006111009) including the adoption of a Statement of Overriding Considerations and Mitigation Monitoring Program and approval of the Armstrong Ranch Specific Plan (File No. PSP15-002).

Exhibit "A"
Armstrong Ranch Specific Plan - Land Use Plan



LEGEND

EXHIBIT 4-1: Land Use Plan

 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	 EXISTING TRAIL
 P.A. 4			

Exhibit "B"
Armstrong Ranch Land Use Plan Summary Table

Land Use	Gross Acres	Net Acres	Dwelling Units	Gross Density	Net Density
Residential Single Family					
Planning Area 1	36.8	33.0	192	5.2	5.8
Planning Area 2	36.4	32.5	173	4.8	5.3
Planning Area 3	26.3	24.6	132	5.0	5.4
Planning Area 4	26.3	26.9	132	5.0	4.9
Planning Area 5	30.2	32.6	151	5.0	4.6
Planning Area 6	22.2	21.0	111	5.0	5.3
Planning Area 7*	11.6	10.0	0	0.0	0.0
Roadways		1.6			
Enhanced Neighborhood Edges		7.6			
Total	189.8 AC	189.8 AC	891	5.0 DU/AC	5.5 DU/AC

*This parcel contains a 10 AC school site overlay.

Exhibit “C”

**Armstrong Ranch Specific Plan
Final EIR**

(provided under separate cover)

Armstrong Ranch Environmental Impact Report

(Provided under separate cover)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE ARMSTRONG RANCH SPECIFIC PLAN, FILE NO. PSP15-002, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A MITIGATION MONITORING AND REPORTING PLAN (APNS: 218-101-01, 02, 03, 04, 05, 06, 07, 08, 218-102-10, 11, 218-111-04, 05, 06, 218-111-10, 11,12, 218-111-45 AND 218-111-49, 50).

WHEREAS, CVRC Ontario, LLC (the “Applicant”) proposes the Armstrong Ranch Specific Plan (“Project”) on an approximately 199-acre site in the southern portion of the City of Ontario (“City”); and

WHEREAS, the Project under review considered the following: (1) certification of the Armstrong Ranch Specific Plan Final Environmental Impact Report (“Final EIR”); (2) approval and adoption of the Armstrong Ranch Specific Plan; (3) approval of a tentative tract map; and (4) any related discretionary approvals; and

WHEREAS, the purpose of the Project is to develop a cohesive and attractive community, divided into neighborhoods, which are to be comprised of up to 994 residential units in a variety of housing types and densities on 199-acres, and a 10-acre elementary school site; and

WHEREAS, the Project site is located south of Riverside Drive, west of the Cucamonga Channel, north of Chino Avenue, and east of Vineyard Avenue in the City of Ontario, within the County of San Bernardino, and consists of approximately 199-acres located within that portion of the City commonly referred to as Ontario Ranch (formerly referred to as the New Model Colony), which was annexed into the City in November 1999; and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”) (Public Res. Code, §§ 21000 *et seq.*), the State CEQA Guidelines (14 CCR §§ 15000 *et seq.*) and the City’s Local CEQA Guidelines, the City of Ontario is the lead agency for the Project, as the public agency with the principle responsibility for approving the Project; and

WHEREAS, the City prepared The Ontario Plan Final Environmental Impact Report (“TOP EIR”) (SCH # 2008101140) in association with the 2009 General Plan Update (“GPA”) and certified the TOP EIR on January 26, 2010; and

WHEREAS, the TOP EIR is a Program EIR from which later specific plan EIRs, such as the EIR for this Project, are tiered; and

WHEREAS, the City originally issued a Notice of Preparation (“NOP”) for the Armstrong Ranch Specific Plan for which the public review period ended July 8, 2015. The City received comments from multiple agencies on the NOP; and

WHEREAS, a public scoping meeting was held June 22, 2015, where no comments were received; and

WHEREAS, after completing the Draft EIR (SCH# 2006111009), the City released the document for public review for a 45-day public comment period, beginning September 30, 2016, and ending on November 14, 2016, by filing a Notice of Availability with the County of San Bernardino Clerk’s Office; and

WHEREAS, pursuant to Public Resources Code section 21092, the City also provided a Notice of Availability to all organizations and individuals who had previously requested such notice, and published the Notice of Availability on or about September 30, 2016, in the Inland Valley Daily Bulletin, a newspaper of general circulation in the Project area; and

WHEREAS, pursuant to City of Ontario Local CEQA Guidelines, the Notice of Completion was mailed to all residents and property owners within 500 feet of the Project. Copies of the Draft EIR were provided to public agencies, organizations and individuals. In addition, the City placed copies of the Draft EIR at the City of Ontario Planning Department, San Bernardino County Clerk’s Office, and Public Library Main Branch; and

WHEREAS, during the 45-day comment period on the Draft EIR, the City consulted with and requested comments from all responsible and trustee agencies, other regulatory agencies and others pursuant to State CEQA Guidelines section 15086; and

WHEREAS, during the official public review period for the Draft EIR, the City received seven (7) written comments, all of which the City responded to in the Final EIR; and

WHEREAS, the City prepared the Final EIR and, pursuant to Public Resources Code section 21092.5, the City provided copies of the Final EIR to all commenting agencies; and

WHEREAS, the City provided a Notice of Public Hearing and/or Intent to Certify an Environmental Impact Report to all organizations and individuals who had previously requested such notice, and published the Notice of Public Hearing on or about October 4, 2017, in the Inland Valley Daily Bulletin, a newspaper of general circulation in the Project area; and

WHEREAS, all potential significant adverse environmental impacts were sufficiently analyzed in the Final EIR; and

WHEREAS, the City of Ontario Planning Commission conducted a public hearing on October 24, 2017, and concluded said hearing on that date. After considering all public testimony, the Planning Commission issued Resolution No. PC17-078, recommending City Council certification of the Project EIR; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a hearing on the Project and concluded said hearing on that date; and

WHEREAS, as contained herein, the City has endeavored in good faith to set forth the basis for its decision on the Project; and

WHEREAS, all the requirements of CEQA, the State CEQA Guidelines, and the City's Local Guidelines have been satisfied by the City in the EIR, which is sufficiently detailed so that all of the potentially significant environmental effects of the Project have been adequately evaluated; and

WHEREAS, the EIR prepared in connection with the Project sufficiently analyzes both the feasible mitigation measures necessary to avoid or substantially lessen the Project's potential environmental impacts and a range of feasible alternatives capable of eliminating or reducing these effects in accordance with CEQA, the State CEQA Guidelines and the City's Local Guidelines; and

WHEREAS, all of the findings and conclusions made by the City Council pursuant to this Resolution are based upon all oral and written evidence presented to it as a whole and are not based solely on the information provided in this Resolution; and

WHEREAS, environmental impacts identified in the Final EIR which the City finds are less than significant and do not require mitigation are described in Section II hereof; and

WHEREAS, environmental impacts identified in the Final EIR as potentially significant but which the City finds can be mitigated to a level of less than significant, through the imposition of feasible mitigation measures identified in the Final EIR and set forth herein and in the Mitigation Monitoring and Reporting Plan, attached hereto as Exhibit A, are described in Section III hereof; and

WHEREAS, environmental impacts identified in the Final EIR as potentially significant and which the City finds cannot be fully mitigated to a level of less than significant, despite the imposition of all feasible mitigation measures identified in the Final EIR and set forth herein, are described in Section IV hereof; and

WHEREAS, alternatives to the Project that might eliminate or reduce significant environmental impacts are described in Section VII hereof; and

WHEREAS, because some environmental impacts identified in the Final EIR as potentially significant cannot be fully mitigated to a level of less than significant, despite the imposition of all feasible mitigation measures identified in the Final EIR and set forth herein, the City Council has balanced the economic, legal, social, technological, and other benefits of the Project against its significant and unavoidable impacts, and has determined that the benefits of the Project outweigh the unavoidable adverse impacts, and therefore, render those impacts "acceptable." The City Council has documented its determination regarding significant and unavoidable impacts in the Statement of Overriding Considerations in Section VIII hereof; and

WHEREAS, prior to taking action, the City Council has heard, been presented with, reviewed and considered all of the information and data in the administrative record, including the Final EIR, and all oral and written evidence presented to it during all meetings and hearings on the Project; and

WHEREAS, the Final EIR reflects the independent judgment of the City Council and is deemed adequate for purposes of making decisions on the merits of the Project; and

WHEREAS, no comments made in the public hearings conducted by the City or any additional information submitted to the City have produced substantial new information requiring recirculation or additional environmental review under State CEQA Guidelines section 15088.5; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO RESOLVES AS FOLLOWS:

SECTION I

FINDINGS

Public Resources Code section 21002 states that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” Section 21002 further states that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.”

Agencies demonstrate compliance with Section 21002’s mandate by adopting findings before approving projects for which EIRs are required. (See Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) The approving agency must make written findings for each significant environmental effect identified in an EIR for a proposed project and must reach at least one of three permissible conclusions. The first possible finding is that “[c]hanges or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.” (State CEQA Guidelines, § 15091, subd. (a)(1).) The second permissible finding is that “[s]uch changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding” and that “[s]uch changes have been adopted by such other agency or can and should be adopted by such other agency.” (State CEQA Guidelines, § 15091, subd. (a)(2).) The third potential conclusion is that “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.” (State CEQA Guidelines, § 15091, subd. (a)(3).)

Agencies must not adopt a project with significant environmental impacts if feasible alternatives or mitigation measures would substantially lessen the significant impacts. Public Resources Code Section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” State CEQA Guidelines Section 15364 adds “legal” considerations as another indicia of feasibility. (See also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565.) Project objectives also inform the determination of “feasibility.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417.) Further, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Id.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) An agency need not, however, adopt *infeasible* mitigation measures or alternatives. (State CEQA Guidelines, § 15091, subds. (a), (b).) Further, environmental impacts that are less than significant do not require the imposition of mitigation measures. (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1347.)

Notably, Section 21002 requires an agency to “substantially lessen or avoid” significant adverse environmental impacts. Thus, mitigation measures that “substantially lessen” significant environmental impacts, even if not completely avoided, satisfy Section 21002’s mandate. (*Laurel Hills Homeowners Assn. v. City Council* (1978) 83 Cal.App.3d 515, 521 (“CEQA does not mandate the choice of the environmentally best feasible project if through the imposition of feasible mitigation measures alone the appropriate public agency has reduced environmental damage from a project to an acceptable level”); *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 309 (“[t]here is no requirement that adverse impacts of a project be avoided completely or reduced to a level of insignificance . . . if such would render the project unfeasible”).)

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (State CEQA Guidelines, § 15091, subds. (a), (b).) The California Supreme Court has stated, “[t]he wisdom of approving ... any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced.” (*Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at p. 576.)

The City Council has determined that based on all of the evidence presented, including, but not limited to, the Final EIR, written and oral testimony given at meetings and hearings on the Project, and submission of testimony from the public, organizations and regulatory agencies, the following environmental impacts associated with the Project are: (1) less than significant and do not require mitigation; or (2) potentially significant and each of these impacts will be avoided or reduced to a level of insignificance through the identified mitigation measures; or (3) significant and cannot be fully mitigated to a level of less than significant but will be substantially lessened to the extent feasible by the identified mitigation measures.

SECTION II

RESOLUTION REGARDING ENVIRONMENTAL IMPACTS NOT REQUIRING MITIGATION

Section 15091 of the State CEQA Guidelines does not require specific findings to address environmental effects that an EIR identifies as “less than significant” where no mitigation is required. These findings will nevertheless fully account for all such effects identified in the Draft EIR in this Section II. Thus, the City Council hereby finds that the following potential environmental impacts of the Project are less than significant and do not require the imposition of mitigation measures:

A. Aesthetics:

Impact: Does the proposed Project have a substantial adverse effect on a scenic vista. (Draft EIR, at p. 3-7.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts on aesthetics, including scenic vistas. (Draft EIR, at p. 3-7.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: TOP does not identify any scenic vistas either on or adjacent to the site that would be impacted by the project. Views of the San Bernardino mountains approximately 18 miles north of the project will continue to be in view to the project residents and the project will not affect the views of the mountains by residents near the project site. The project would not have any significant scenic vista impacts. (Draft EIR, at p.3-7.)

Impact: Does the proposed Project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings and historic buildings with a state scenic highway. (Draft EIR, at p. 3-7)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts on aesthetics, including scenic resources. (Draft EIR, p. 3-7.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There are no State scenic highways within or adjacent to the site. Highway 38 near Big Bear is more than 30 miles from the project and the closest State designated scenic highway to the site. The project would not have an impact to any scenic resources such as trees, rock outcroppings, or historic buildings in a State scenic highway. (Draft EIR, at p.3-7.)

Impact: Does the proposed Project substantially degrade the existing visual character or quality of the site and its surroundings. (Draft EIR, at p. 3-7.)

Finding: The Armstrong Ranch Project will not substantially impact the existing visual character or quality of the site. (Draft EIR, at p. 3-7.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The proposed Specific Plan will change and alter the existing agricultural character of the site to urban development with the construction of 944 residential units, an elementary school, parks, open space, roads, etc. The existing vacant dairy farms, horse farm, trucking company and agricultural cropland field will ultimately be changed to urban uses as planned for the site by TOP.

The Specific Plan provides design criteria for the residential development. The residential homes that are proposed within each Planning Area are designed to address a variety of lifestyles, such as singles, families, executives and “empty nesters” by providing a variety of house sizes, lot sizes, one and two story homes, various architecture, etc.

Armstrong Ranch proposes a variety of parks and recreational facilities that will be integrated throughout the site. The proposed park and recreational facilities include a 2.06-acre central park (Armstrong Park), a theme trail (Charlotte Armstrong Trail), pocket parks within each neighborhood and paseo connections to the City master planned multi-use trail along Chino Avenue. The parks and trails will be accessible to the project residents by sidewalks along both sides of all internal neighborhood streets. Private Pocket parks are proposed within each residential Planning Area.

Enhanced landscaped parkways are proposed within the neighborhood edges of all master planned streets consistent with the City’s master plan of streets. The parkways will include landscaping behind the public street right of way.

All project landscaping maintained by the City will conform to the City of Ontario’s Landscape Requirements and Ontario Plan Landscape Guidelines in the Ontario Plan Streetscape Master Plan. All parkways and right-of-ways will be landscaped with living plant material less than 18” high, automatically irrigated and contain street trees per the Master Street Tree Plan spaced 25’-35’ apart and coordinated with utility setbacks. All landscaping and irrigation will comply with the City of Ontario’s Landscape Development Standards and the Ontario Plan Streetscape Master Plan.

The Armstrong Ranch Specific Plan includes design guidelines that meet the intent of TOP Community Design goals and policies for suitable design in the community. Design guidelines are provided by the Armstrong Ranch Specific Plan for all of the various residential units, interior and perimeter streetscapes, project entries and monuments, parks, paseos and private recreation areas, community walls and fencing, outdoor lighting, and landscaping to comply with TOP Community Design goals and policies. In addition, the Armstrong Ranch Specific Plan provides criteria for maximum lot coverage, building orientation, building massing, building form and height, pedestrian connectivity, parking, etc. to ensure the project meets the goals and policies of the Community Design Element of TOP. The Specific Plan also includes language that will require project landscaping and irrigation to comply with the City of Ontario’s Landscape Development Standards and the Ontario Plan Streetscape Master Plan.

The Specific Plan Design Guidelines have precedence over the Ontario zoning regulations. Development of the Specific Plan Design Guidelines in compliance with TOP Land Use Element, Housing Element and Community Design Element policies would ensure that the design of the project is consistent throughout and meets the intent of the City.

The development of the site consistent with and in accordance of TOP would change the existing visual character of the existing agricultural uses in the project area, however, impacts are not considered significant because TOP policies of the Community Design Element have the common goal of improving the visual quality of the area by developing guidelines to improve future development projects. The project will improve the architectural quality of the project site compared to existing site conditions with the distinct neighborhoods to create a sense of identity and belonging among residents, create a design quality resulting in public spaces, streetscapes, and developments that are attractive, safe, functional and distinct, and develop a vibrant urban environment that is organized around intense buildings, pedestrian and linkages between and within residential neighborhoods that are conveniently located, visually appealing and safe during all hours to meet the intent of TOP Goals CD1, CD2, and CD3. Therefore, the project would not have any significant aesthetic impacts if developed as proposed. (Draft EIR, at p. 3-7 to 3-13.)

Impact: Does the proposed Project create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. (Draft EIR, at p. 3-13.)

Finding: The Armstrong Ranch Project will not have any substantial light or glare impacts. (Draft EIR, at p. 3-13.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project will introduce new sources of light and glare and increase its intensity compared to the existing condition. The sources of light by the project include interior and exterior lights of the residential units, streetlights, automobile headlights, etc. The sources of glare will be generated mostly by metal trim and surfaces and materials on the exterior of the residential units and windows.

While the project will increase on-site lighting, all lighting, including construction lighting, must comply with the Ontario Municipal Code. The City does not allow flood lighting and all lighting will be required to be directed downward to reduce high intensity lighting from extending off-site. The lighting restrictions of the Armstrong Ranch Specific Plan that encourages the use of "cut-off", louvered lamps or locating light fixtures to minimize light sources to pedestrians or vehicular traffic will minimize light impacts. The light and glare impacts of the project are not anticipated to significantly impact light sensitive land uses in the immediate project area. (Draft EIR, at p. 3-13 to p. 3-14.)

Impact: Does the proposed Project have a cumulative impact to aesthetics. (Draft EIR, at p. 3-14.)

Finding: The Armstrong Ranch Project will not have substantial adverse cumulative aesthetic impacts. (Draft EIR, at p. 3-14.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project, along with other cumulative projects, will have cumulative aesthetic impacts, including light and glare impacts in the project vicinity. The development of the project and cumulative projects will change and alter the aesthetics of the area from largely agricultural to urban development with residential and commercial uses and will change the existing agricultural landscaping and increase the intensity of light and glare in this area of Ontario. All development in Ontario and the project area must meet and comply with applicable TOP Land Use Element, Housing Element and Community Design Element policies to minimize aesthetic and visual impacts. All development must meet lighting restrictions of the Municipal Code to minimize light and glare impacts to the project area. However, the development is planned for the area by TOP anticipates the change in the aesthetics of the area from agricultural to urban development and an increase in light and glare. The project will not have a significant aesthetic or light and glare impact because the development proposed for the site along with the cumulative projects have been planned and anticipated for the area by TOP. As such, cumulative aesthetic or light and glare impacts are concluded to be less than significant. (Draft EIR, at p. 3-14.)

B. Agricultural Resources:

Impact: Does the proposed Project conflict with existing zoning for agricultural use, or a Williamson Act contract. (Draft EIR, at p. 3-24.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts on existing Williamson Act contracts and agricultural zoning. (Draft EIR, at p. 3-24.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Land within the Project site is located within an area of the NMC planned for urban development, and the surrounding agricultural properties will be developed with urban uses per approved and proposed Specific Plans. The City's adoption and implementation of the NMC anticipates the conversion of the Project site from agricultural uses to urban uses.

The Armstrong Ranch Specific Plan Area does not include any properties that are in a Williamson Act contract. While the project would change Prime Farmland to urban use, the project would not impact any Williamson Act contracts. In January 2001, the City adopted the Agricultural Overlay Zone, or the Right to Farm ordinance as a "buffering" device between existing agricultural uses and urban development to allow existing agricultural uses to continue through notice in the form of a deed disclosure to future homeowners that agricultural nuisances (odors, noises, etc.) are present and that they have a right to exist as long as the land is not developed otherwise. The existing on-site agricultural uses would be allowed to continue by the Right to Farm ordinance. Therefore, the project would not impact the zoning that allows existing agricultural use to continue with the project. (Draft EIR, at p. 3-23 to p. 3-24.)

Impact: Does the proposed Project conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)). (Draft EIR, at p. 3-24.)

Finding: The project would not conflict with or impact any zoning that allows forests or timberland (Draft EIR, at p. 3-24.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There is no land in the City of Ontario or the project site that qualify as forest land as defined in Public Resources Code Section 12220(g). Neither TOP nor the City's Zoning Code provide designations for forest land. The project would not conflict with or impact any zoning that allows forests or timberland. (Draft EIR, at p.3-24.)

Impact: Does the proposed Project result in the loss of forestland or conversion of forest land to non-forest use. (Draft EIR, at p. 3-24.)

Finding: The project would not result in the loss of any forestland. (Draft EIR, at p. 3-24.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There is no forestland in the City of Ontario, which includes the Project site. Therefore, the project would not convert any forestland to non-forest use. (Draft EIR, at p. 3-24.)

C. Air Quality:

Impact: Would the proposed Project conflict with or obstruct implementation of the applicable air quality plan. (Draft EIR, at p. 3-40.)

Finding: The Armstrong Ranch Project will not conflict with or obstruct the implementation of the air quality plan. (Draft EIR, at p. 3-40 to p. 3-41.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The South Coast Air Quality Management District's (SCAQMD) CEQA Handbook states that "New or amended GP Elements (including land use zoning and density amendments), Specific Plans, and significant projects must be analyzed for consistency with the AQMP." A project should be considered consistent with the plan if it furthers one or more policies and does not obstruct other policies. The Handbook identifies two key indicators of consistency:

(1) Whether the project will result in an increase in the frequency or severity of existing air quality violations or cause or contribute to new violations, or delay timely attainment of air quality standards or the interim emission reductions specified in the AQMP (except as provided for CO in Section 9.4 for relocating CO hot spots).

(2) Whether the project will exceed the assumptions in the AQMP based on the year of project buildout and phase.

Criterion 1 - Increase in the Frequency or Severity of Violations. On-site emissions generated during the life of the project will not exceed SCAQMD's LST criteria and construction impacts will be reduced to less than SCAQMD regional and localized significance thresholds. Accordingly, the project likely will not increase the frequency or severity of existing air quality violations in the immediate vicinity of the project. Based on the 2030 emissions estimate from the 2012 AQMP, the project's estimated VOC and NOX emissions represent 0.010% and 0.014% of the total emissions in the SCAB. This small increase in emissions would not result in a considerable increase in downwind ozone concentrations. Therefore, the project is not projected to considerably contribute to the exceedance of any air pollutant concentration standards and is consistent with the AQMP for the first criterion.

Criterion 2 - Exceed Assumptions in the AQMP. Consistency with the AQMP assumptions is determined by performing an analysis of the project with the assumptions in the AQMP. The Regional Comprehensive Plan and Guide (RCP&G) consists of three sections: Core Chapters, Ancillary Chapters, and Bridge Chapters. The Growth Management, Regional Mobility, Air Quality, Water Quality, and Hazardous Waste Management chapters constitute the Core Chapters of the document. These chapters currently respond directly to federal and state requirements placed on SCAG. Local governments are required to use these as the basis of their plans for purposes of consistency with applicable regional plans under CEQA.

The SCAG forecasts are based on the General Plans of the municipalities in the basin. The current General Plan designation for the project site by TOP is Low Density Residential (2.1 to 5.0 dwelling units per acre). The project proposes to develop the site consistent with TOP and the Low Density Residential use. Therefore, the project is consistent with the current General Plan and emissions will not be greater than those anticipated in the AQMP. The project will be consistent with and not impact the AQMP. (Draft EIR, at p. 3-40 to p. 3-41.)

Impact: Would the proposed Project create objectionable odors affecting a substantial number of people. (Draft EIR, at p. 3-49.)

Finding: The Armstrong Ranch Project will have no odor impacts. (Draft EIR, at p. 3-49.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The residential uses proposed by the Project will not create any odors that could be considered objectionable. (Draft EIR, at p. 3-50.)

D. Biological Resources:

Impact: Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. (Draft EIR, at p. 3-64.)

Finding: The Armstrong Ranch Project will have no impact on riparian habitat, federally protected wetlands, or a sensitive natural community. (Draft EIR, at p. 3-64.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Based on the biological studies that were prepared for the site, the site does not support any riparian habitat or other sensitive natural community identified in any local or regional plans, policies, or regulations by the CDFW or USFWS. Therefore, the project would not impact riparian or natural communities. (Draft EIR, at p. 3-64 to p. 3-65.)

Impact: Would the Project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. (Draft EIR, at p. 3-65.)

Finding: The Armstrong Ranch Project will have no impact on federally protected wetlands as defined by Section 404. (Draft EIR, at p. 3-65.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Based on the biological studies that were prepared for the site, the project site lacks water resources under the jurisdiction of the Corps, CDFW, and the Regional Water Quality Control Board based on site surveys of PAs 2, 3, 4 and 5 and no evidence of wetlands on PAs 1, 6A, 6b or 7 based on the review of aerial photographs and off-site visual observations. The project would not impact federally protected wetlands as defined by Section 404 of the CWA (including but limited to, marsh, vernal pool, coastal, etc.) or any other federal or state protected water resources through direct removal, filling, hydrological interruptions, or other means. (Draft EIR, at p. 3-65.)

Impact: Would the proposed Project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Draft EIR, at p. 3-65.)

Finding: The Armstrong Ranch Project will have no significant impacts on the movement of any native resident or migratory fish or animal species, nor will it diminish habitat for such species. (Draft EIR, at p. 3-65 to p. 3-66.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project site lacks land features (e.g. drainage) that would potentially support wildlife migration or large-scale nursery habitat. Based on the existing conditions on the site and the absence of any existing wildlife corridors or nursery sites, the project will not interfere with or impact the movement of any native resident or migratory fish or wildlife on those areas of the site that were surveyed. Therefore, the project will not impact the movement of or impede the use of any native wildlife corridors or nursery sites of the areas surveyed. For those areas that were not surveyed, based on a review of aerial

photographs and off-site observations, the potential for the presence of native resident or migratory wildlife corridors or native wildlife nursery sites on PAs 1, 6A, 6B and 7 and be disturbed and impacted by the project would be less than significant. (Draft EIR, at p. 3-65.)

Impact: Does the proposed Project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? (Draft EIR, at p. 3-66.)

Finding: The Armstrong Ranch Project will not conflict with any adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? (Draft EIR, at p. 3-66.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project site is not located within any adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. The project will not impact a conservation plan. (Draft EIR, at p. 3-66.)

E. Geology/Soils:

Impact: Would the proposed Project expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving (1) rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault; (2) strong seismic groundshaking; (3) seismic-related ground failure, including liquefaction; or (4) landslides. (Draft EIR, at p. 3-89.)

Finding: The Project will be required to comply with California Building Code (CBC) standards and applicable City standards and procedures to reduce seismic-related hazards and impacts related to ground shaking or secondary seismic hazards are less than significant. (Draft EIR, at p. 3-89 to p. 3-90.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project is not located within or close to any Alquist-Priolo zones and is approximately 6.6 miles from the nearest fault line (Chino–Central Avenue Fault). The project is, however, in a seismically active region, and seismic hazards will be taken into account in the design and construction of the residential and commercial structures proposed for the site, as well as evaluated for all development, including utilities, throughout the site. Based on the geotechnical reports prepared for the site, there are not any significant constraints associated with the development of the Armstrong Ranch Specific Plan related to ground shaking or secondary seismic hazards such as liquefaction or dynamic settlement that cannot be mitigated through implementation of the 2013 California Building Codes and standard engineering practices. (Draft EIR, at p. 3-89 to p. 3-90.)

Impact: Will the proposed Project result in substantial soil erosion or loss of topsoil. (Draft EIR, at p. 3-90.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts soil erosion or loss of topsoil. (Draft EIR, at p. 3-90.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Specific erosion impacts depend largely on the areas affected and the length of time soils are subject to conditions that would be affected by erosion processes. Because much of the site currently consists of open space and unpaved surfaces, it is currently exposed to potential wind and water erosion. The development of the project, which includes buildings, paved areas, and landscaping, would decrease soil erosion because less soil would be exposed to wind and water erosion compared to existing conditions.

There are no steep slopes on the project site. Therefore, the potential for erosion due to surface water runoff throughout the project site during construction is considered low due to the relatively flat slope of the site. The proposed development plan does not propose to significantly change or alter the existing topography throughout the site. As a result, the project would not result in a significant alteration of the natural topographic features of the site to an extent that new erosion would occur or existing erosion would be further exacerbated.

All project related construction activity would be required to comply with Chapter 29 of the California Building Code (CBC), which regulates excavation activities and the construction of foundations and retaining walls. In addition, Chapter 70 of the CBC regulates all grading activities, including drainage and erosion control that will occur on the site. Compliance with City grading and building permits and the CBC requirements would minimize effects of erosion during project construction and throughout the life of the project to less than significant. Further, as discussed below, the Project would implement a Stormwater Pollution Prevention Plan (SWPPP) for construction activities and best management practices (BMPs) for control of erosion and sedimentation in compliance with the Project water quality management plan (WQMP). Therefore, implementation of the proposed Project would result in less than significant impacts related to soil erosion. (Draft EIR, at p. 3-90 to p. 3-91.)

Impact: Would the proposed Project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. (Draft EIR, at p. 3-91.)

Finding: The Armstrong Ranch Project will have no significant impacts associated with development on unstable soil, on- or off-site landslide, lateral spreading, subsidence, liquefaction or soil collapse. (Draft EIR, at p. 3-91 to p. 3-92.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Based on the geotechnical reports prepared for the site, there are not any soil or geotechnical constraints on the site that would significantly impact and prevent the development of the Armstrong Ranch Specific Plan as proposed. The incorporation of the geotechnical reports recommendations and design considerations as approved by the City Engineer will reduce potential geotechnical restraints to less than significant for the 112 acres surveyed and preliminary soils and geotechnical analysis will be required for the remainder of the project site at the time development plans are submitted to the City for approval. The City Engineer will review final soils and geotechnical reports for compliance with the 2013 California Building Codes and standard engineering practices. (Draft EIR, at p. 3-91 to p. 3-92)

Impact: Would the proposed Project be located on expansive soil, as defined in Table 18 1 B of the Uniform Building Code (1994), creating substantial risks to life or property. (Draft EIR, at p. 3-92.)

Finding: The Armstrong Ranch Project will not have any significant expansive soil impacts. (Draft EIR, at p. 3-92.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Based on the geotechnical reports prepared for the site, the existing on-site soils have a low to medium expansion potential and a less than significant impact on the proposed development. (Draft EIR, at p. 3-92)

Impact: Does the proposed Project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater. (Draft EIR, at p. 3-92.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts on soils due to septic tanks or wastewater disposal systems. (Draft EIR, at p. 3-92)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Project does not propose the use of septic tanks or any alternative wastewater disposal systems. Wastewater disposal services would be provided through connections to the public sewer system that serves the City. Septic tanks or other on-site wastewater disposal systems are not allowed by the City to serve the project. Therefore, implementation of the proposed Project would not result in impacts related to on-site or alternative wastewater disposal systems. (Draft EIR, at p. 3-92.)

Impact: Does the proposed Project have a cumulative impact to geology/soils. (Draft EIR, at p. 3-92 to p. 3-93.)

Finding: The Armstrong Ranch Project will not have significant cumulative geology/soils impacts. (Draft EIR, at p. 3-92 to p. 3-93.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project and the cumulative projects would be exposed to potential geologic hazards related to soil and other conditions for individual building sites, and ground shaking from seismic events on known and unknown faults in the region. These effects would be site specific, and impacts would not be compounded by additional development. Buildings and facilities within the City of Ontario would be sited and designed in accordance with appropriate geotechnical and seismic guidelines and recommendations consistent with the CBC and UBC. The adherence of all cumulative projects to relevant plans, codes, and regulations with respect to project design and construction, including the NPDES permit system, would reduce impacts to the extent feasible, and impacts would not be cumulatively considerable. The project would have a less than significant contribution to cumulative effects. (Draft EIR, at p. 3-92 to p. 3-93.)

F. Greenhouse Gas Emissions

Impact: Would the proposed Project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emission of greenhouse gases. (Draft EIR, at p. 3-105.)

Finding: The Armstrong Ranch Project will not have a significant impact to the City approved Community Climate Action Plan (CCAP). (Draft EIR, at p. 3-105.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project will meet and not have any conflicts with the greenhouse gas emission requirements established by the City of Ontario CCAP with implementation of the greenhouse reduction measures listed in Table 3.7-1. (Draft EIR, at p. 3-105.)

Impact: Does the proposed Project have a cumulative impact to greenhouse gasses. (Draft EIR, at p. 3-105 to p. 3-106.)

Finding: The Armstrong Ranch Project will not have significant cumulative greenhouse gas impacts. (Draft EIR, at p. 3-105 to p. 3-106.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project will meet and not exceed GHG emissions allowed by the project. While the project, like all development, will generate GHG emissions to the area, the project meets the City's GHG emission requirements. Similarly, all development in Ontario is required to comply with applicable federal, state, and local GHG emission regulations. The compliance of all cumulative development with all applicable federal, state and local GHG emission regulations would not result in any significant cumulative GHG emission impacts. (Draft EIR, at p. 3-105 to p. 3-106.)

G. Hazards and Hazardous Materials:

Impact: Will the proposed Project create a significant hazard to the public or the environment through the transport, use, or disposal of hazardous materials. (Draft EIR, at p. 3-118.)

Finding: The Armstrong Ranch Project will not use any hazardous materials and have a less than significant impact to the public or environment through the transport, use or disposal of hazardous materials. (Draft EIR, at p. 3-118.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The proposed residential use of the site will not involve the transport, use, or disposal of hazardous materials. The only hazardous materials that will be transported and stored on the site will include temporary storage of hazardous materials for use by the contractor during project grading and construction to operate and maintain the various types of motor powered equipment. The types of hazardous materials include diesel fuel, gasoline, lubricants, paints, solvents, etc. It will be the responsibility of the contractor to use and store all hazardous materials in compliance with applicable Federal, state, and local laws and regulations during project construction. (Draft EIR, at p. 3-118.)

Project residents will use standard household cleaning materials to clean and maintain their residences. Herbicides and pesticides may be used by project residents and the Home Owners Association to maintain project landscaping. The transportation, use and storage of consumer materials that contain low levels of active hazardous materials will reduce the potential for hazard impacts. The project will therefore not have any significant impacts associated with the transportation, use or storage of hazardous materials. (Draft EIR, at p. 3-118.)

Impact: Will the Project be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, and as a result, create a significant hazard to the public or environment. (Draft EIR, at p. 3-121.)

Finding: The Armstrong Ranch Project is not located on a hazardous waste site per Government Code Section 65962.5 and will not have an impact to the public or the environment. (Draft EIR, at p. 3-121.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Based upon review of federal, state, and County hazardous waste lists and databases pursuant to Government Code Section 65962.5, no mapped sites were found on any of the properties that were surveyed, or within one mile of the project site. The lists and databases contain information regarding asbestos waste, underground storage tanks, photo processing chemicals, PCBs, unspecified solvent and organic mixture wastes, unspecified aqueous solution, metal sludge, other hazardous materials monitored by statute or regulation, known releases of hazardous substances, locations where radioactive or other hazardous materials are stored or second-hand, facility information, and "pointers" to other sources of information that contain more detail. No portion of the project site was identified as being on the Cortese or CHMIRS lists. Therefore, the impact is less than significant. (Draft EIR, at p. 3-121.)

Impact: For a project located within the safety zone of the airport land use compatibility plan for ONT or Chino Airports, would the project result in a safety hazard for people residing or working in the project area. (Draft EIR, at p. 3-122.)

Finding: The Armstrong Ranch Project would not result in a safety hazard for people residing or working in the area. (Draft EIR, at p. 3-122.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Because the Project is not located within the Influence Area of the Chino Airport, operations of the Chino Airport would not impact the safety of project residents. Although the Project is within the Influence Area of the Ontario Airport, the project is outside of all designated airport safety zones and consistent with the Ontario Airport Land Use Compatibility Plan. The Armstrong Ranch Project would not result in a safety hazard for people residing or working in the area. (Draft EIR, at p. 3-122.)

Impact: If the proposed Project located within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area. (Draft EIR, at p. 3-122.)

Finding: The Armstrong Ranch Project is not located within the vicinity of any private airstrips. (Draft EIR, at p. 3-122.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There are no private airstrips within the vicinity of the project. The project will not impact a private airstrip. (Draft EIR, at p. 3-122.)

Impact: Does the proposed Project impair the implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. (Draft EIR, at p. 3-122.)

Finding: The Armstrong Ranch Project will not interfere with an emergency response or evacuation plan. (Draft EIR, at p. 3-122.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Project Site will be served by the Ontario Police Department, the Ontario City Fire Department, and Emergency Medical Services provided by the Ontario Fire Department. The Ontario Fire Department shall continue to implement the city's Emergency Management Plan (EMP) to ensure that multiple emergency access or evacuation routes are provided in the event that one roadway or travel route is temporarily blocked so that another route is available. The project proposes to improve the major roads adjacent to the site that currently provide emergency access to the site, which will have a positive impact by providing safer and faster emergency response to both the project site and adjacent surrounding properties. The project will have no impact to emergency response and evacuation and no mitigation is required. (Draft EIR, at p. 3-122.)

Impact: Does the proposed Project expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands. (Draft EIR, at p. 3-123.)

Finding: The Armstrong Ranch Project will not expose residents to impacts of a wildfire. (Draft EIR, at p. 3-123.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The site is not located in a designated wildland fire area. The site is surrounded by agricultural uses to the south and west, the Cucamonga Creek and residential uses to the east, and with residential, commercial, and golf course uses to the north, north of Riverside Drive. Residences are not intermixed with wildlands and the project will have no impact related to wildland fires. (Draft EIR, at p. 3-123.)

Impact: Does the proposed Project have a cumulative impact to hazards and hazardous materials. (Draft EIR, at p.3-123.)

Finding: The Armstrong Ranch Project will not have significant cumulative hazards or hazardous material impacts. (Draft EIR, at p. 3-123 to p. 3-124.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Risks associated with hazardous materials are largely site specific and localized, thus, limited to the project site. Additionally, site-specific investigations would be conducted for those properties with potential contaminated soils or groundwater to minimize the exposure of construction workers and project residents to hazardous substances.

The cumulative projects include land uses similar to the proposed project as well as other projects in the area such as residential, recreational, commercial/retail, and open space. Similar planned development in Ontario would result in the development of land that was previously used for dairy farms, agricultural production, and demolition of existing structures, which may contain hazardous materials. The adherence of all cumulative projects to applicable federal, state, and local regulations and guidelines would address site-specific impacts and ensure that impacts from those activities would be less than significant and not cumulatively considerable. (Draft EIR, at p. 3-123 to p. 3-124.)

H. Hydrology and Water Quality:

Impact: Will the proposed Project violate any water quality standards or waste discharge requirements. (Draft EIR, at p. 3-133.)

Finding: The Armstrong Ranch Project will not significantly violate any water quality standards or waste discharge requirements. (Draft EIR, at p. 3-133 to p. 3-138.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Each tract map within the project would disturb an area greater than one acre in size and thus, is subject to the provisions of the General Construction Activity Storm water Permit adopted by the State Water Resources Control Board (SWRCB). The preparation of a Storm Water Pollution Prevention Plan (SWPPP) is required by the State for compliance with the NPDES General Construction Storm water Activity Permit. Compliance of the project with the permit includes filing a Notice of Intent with the SWRCB and preparing, at minimum, a SWPPP and Erosion Sediment Control Plan prior to the start of any construction activity. The SWPPP requires the identity of all sources of sediment and other pollutants on the project site and lists the required BMP's to control sediment and other pollutants in storm water discharged from the site. A monitoring program is required to aid the implementation of, and assure compliance with, the SWPPP. The SWRCB permit requirements will be satisfied prior to the start of construction.

The project is required by the City to develop and implement a Water Quality Management Plan (WQMP) that, upon approval, would serve as the manual to maintain water quality by encouraging retention/infiltration of storm water runoff, rainwater harvesting and reuse or biotreatment in conformance with the County of San Bernardino MS4 Permit. The WQMP would also detail the specific operation and maintenance of each structural and nonstructural Best Management Practices (BMP's) for the project, including non-structural, source control BMPs and include street-sweeping on a monthly basis, storm drain placarding with a "No Dumping" message, programs to educate the public on the proper disposal of hazardous/toxic wastes, pickup and disposal of animal feces, regulatory approaches, and detection and elimination of illicit and illegal dumping.

Low Impact Development BMPs, developed in compliance with the WQMP would reduce potential project pollutant loads to the Cucamonga Creek Channel and areas downstream of the channel. Anticipated LID site design BMPs include, but are not limited to, swales and detention areas in landscape strips and setback areas, roof drainage into porous sub grade, and depressing the park areas for storm water retention and infiltration. Source control BMPs may include, but are not limited to, storm drain inlet signage, catch basin trash racks, efficient irrigation, public education and street and parking lot sweeping programs. The compliance of the project, including construction and post-construction activities, with all applicable State and local regulations will reduce project water quality and waste discharge impacts to less than significant. (Draft EIR, at p. 3-133 to p. 3-138.)

Impact: Will the proposed Project substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted. (Draft EIR, at p. 3-138.)

Finding: The Armstrong Ranch Project will not substantially deplete groundwater supplies or interfere with groundwater recharge. (Draft EIR, at p. 3-138 to p. 3-139.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Based on a Water Supply Assessment (WSA) that was prepared, the estimated 606 acre-feet of water a year consumed by the Project is included in the adopted City of Ontario 2010 Urban Water Management Plan. The WSA states that the total water supplies that are available to the City during normal, single dry, and multiple dry water years during a 20-year projection are sufficient to meet the projected water demand of the proposed project in addition to the City's existing and planned future uses, including agricultural and manufacturing. As a result, the Project will not substantially deplete groundwater supplies.

The ultimate build-out of the Project would result in abandonment of the existing potable and irrigation wells on the site. The abandonment of these wells would eliminate the pumping of groundwater and increase the volume of water in the local aquifer. This would have a positive impact by increasing the amount of water in the local aquifer and available for use.

Through robust implementation of LID BMPs throughout the Specific Plan, reductions in on-site groundwater recharge would not significantly impact recharge of the local groundwater basin because significant project runoff would continue to percolate into the groundwater via the onsite basins, etc. In addition, water for landscape irrigation both on private lawns and public open space would percolate into the groundwater that could offset some of the loss due to impervious surfaces and reduce some of the potential loss of groundwater recharge by the project. All streetscape irrigation on the major project roadways, along with Armstrong Park and pocket parks will use recycled water. Furthermore, the project will meet all applicable water conservation measures required by the California Green Building Standards Code (Part 11 of Title 24, California Code of Regulations). The City will require the project to comply with all applicable water conservation measures established and required by Governor Brown's Executive Order B-37-16 issued on May 9, 2016. In addition, all project residents will be required to comply with the City of Ontario water restrictions. The project will not have any significant groundwater supply or recharge impacts. (Draft EIR, at p. 3-138 to p. 3-139.)

Impact: Will the proposed Project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site. (Draft EIR, at p. 3-139.)

Finding: The Armstrong Ranch Project will not substantially alter existing drainage patterns on the site and result in substantial on- or off-site erosion or siltation. (Draft EIR, at p. 3-139.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project proposes to maintain the existing north to south drainage and not significantly alter the existing drainage pattern of the site. In addition, the project developer will be required to install and maintain all applicable Low Impact Development (LID) BMP's and other measures necessary to minimize excess runoff during both project construction and the life of the project. The project will not significantly alter the overall existing drainage pattern of the site from north to south or change the course of a stream or river and increase soil erosion or siltation. (Draft EIR, at p. 3-139.)

Impact: Will the proposed Project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site. (Draft EIR, at p. 3-139.)

Finding: The Armstrong Ranch Project will not substantially alter existing drainage patterns on the site and result in substantial on- or off-site flooding. (Draft EIR, at p. 3-139.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project proposes to construct master plan storm drain facilities in the adjacent roadways that are sized to adequately accommodate the storm water flows from the project along with storm water flows from other upstream projects. In addition to maintaining the existing drainage pattern of the site, the project will not require the alteration of any stream or river to develop the site. The construction of the proposed on- and off-site storm drain collection facilities and the master plan storm drain facilities adjacent to the site will reduce potential on- or off-site flooding impacts to less than significant. (Draft EIR, at p. 3-139.)

Impact: Will the proposed Project create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff during construction and/or post-construction activity. (Draft EIR, at p. 3-140.)

Finding: The Armstrong Ranch Project will not generate runoff that would exceed existing or planned storm drain systems or generate substantial sources of polluted runoff. (Draft EIR, at p. 3-140.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Project proposes to construct on-site storm drain improvements necessary to collect and discharge excessive storm water flows from the project to eliminate on-site flooding. In addition, the project proposes to construct several off-site master plan facilities that will collect the on-site runoff and direct that runoff to the existing Cucamonga Creek Channel located south of the project. All features of the project storm drain system will be designed and constructed in accordance with the standards set by the City of Ontario and the San Bernardino County Flood Control District and reviewed by the City Engineer for compliance with all applicable City and County standards.

Project compliance with TOP Policy S2-5 of the Safety Element – Flood Hazards, implementation of NPDES, the Regional MS4 Permit and SWPPP requirements through Best Management Practices, submittal of a final drainage plan for review and approval by the City Engineer, coordination with San Bernardino County Flood Control District and consistency with the City's Ontario Plan Master Plan of Drainage would reduce urban contaminants in storm water runoff to reduce surface water quality impacts to less than significant. (Draft EIR, at p. 3-140.)

Impact: Will the proposed Project otherwise substantially degrade water quality or potential for discharge of storm water to affect the beneficial uses of receiving water. (Draft EIR, at p. 3-140.)

Finding: The Armstrong Ranch Project will not substantially degrade water quality or impact receiving water downstream of the project. (Draft EIR, at p. 3-141.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Each tract map within the project is required by the State Water Resources Control Board to prepare a SWPPP with BMP's for compliance with the NPDES General Construction Storm Water Activity Permit prior to the start of any construction activity. The project is also required by the City to develop and implement a Water Quality Management Plan (WQMP) that, upon approval, would serve as the manual to maintain water quality by encouraging retention/infiltration of storm water runoff, rainwater harvesting and reuse or biotreatment in conformance with the County of San Bernardino MS4 Permit. The WQMP would also detail the specific operation and maintenance of each structural and nonstructural Best Management Practices (BMP's) for the project, including non-structural, source control BMPs and include street-sweeping on a monthly basis, storm drain placarding with a "No Dumping" message, programs to educate the public on the proper disposal of hazardous/toxic wastes, pickup and disposal of animal feces, regulatory approaches, and detection and elimination of illicit and illegal dumping. The completion and implementation of the required SWPPP and WQMP will ensure that water quality impacts of the project are reduced to less than significant. (Draft EIR, at p. 3-140 to p. 3-141.)

Impact: Will the proposed Project place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map. (Draft EIR, at p. 3-141.)

Finding: The Armstrong Ranch Project will not place housing in a 100-year flood hazard area. (Draft EIR, at p. 3-141.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Project site is not located in a 100-year flood hazard area. The Cucamonga Creek Channel located adjacent to and east of the Project site eliminates the exposure of the site to a 100-year flood hazard, and the project will have no impact related to housing within a 100-year flood hazard area. (Draft EIR, at p. 3-141.)

Impact: Will the proposed Project place within a 100-year flood hazard area structures which would impede or redirect flood flows. (Draft EIR, at p. 3-141.)

Finding: The Armstrong Ranch Project will not place any structures that would impede or redirect flood flows. (Draft EIR, at p. 3-141.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Project site is not located in a 100-year flood hazard area. Therefore, the construction of residential units and an elementary school will not place any structures in a 100-year flood hazard area and impeded or redirect flood flows. (Draft EIR, at p. 3-141.)

Impact: Will the proposed Project expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam. (Draft EIR, at p. 3-141.)

Finding: The Armstrong Ranch Project will not expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam. (Draft EIR, at p. 3-141 to p. 3-142.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project site is located in the dam inundation area for San Antonio Dam, which is approximately eleven miles north of the project. Catastrophic failure of the San Antonio Dam when it is at or near capacity could spread water two to four feet deep over the western and central parts of the City, which includes the project. However, the probability of catastrophic failure is very low. Furthermore, the City of Ontario Fire Department maintains a list of emergency procedures to be followed in the event of a failure (Ontario 2008). Because the likelihood of catastrophic failure of the San Antonio Dam is very low and the City is prepared in the event of such failure, impacts are considered less than significant. (Draft EIR, at p. 3-141 to p. 3-142.)

Impact: Will the proposed Project expose people or structures to inundation by seiche, tsunami, or mudflow. (Draft EIR, at p. 3-142.)

Finding: The Armstrong Ranch Project will not expose people or structures to inundation by seiche, tsunami or mudflow. (Draft EIR, p. 3-142)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There are no lakes or water reservoirs either on or near the project site that would impact the site due to a seiche. The project is more than 40 miles from the ocean and will not be exposed to or impacted by a tsunami. The topography across the site is less than two percent and relatively flat. Therefore, the chance of mudflow either on- or off-site that would impact the project is remote. There is no impact to the project due to a seiche, tsunami, or mudflow. (Draft EIR, p. 3-142.)

Impact: Does the proposed Project have a cumulative impact to hydrology and water quality. (Draft EIR, at p.3-142.)

Finding: The Armstrong Ranch Project will not have significant cumulative hydrology or water quality impacts. (Draft EIR, at p. 3-142 to p. 3-143.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: All development is required to comply with applicable federal, state, and local regulations. Therefore, there would not be any significant cumulative water quality or storm water impacts. Each cumulative project is subject to the basic requirements of TOP and Regional Water Quality Control Board requirements to address hydrology and water quality issues, respectively. Projects involving construction on sites greater than one acre would be required to obtain NPDES permits. The cumulative hydrology and water quality impacts is less than significant because increased storm water flows in the Ontario Ranch have been planned by master plan facilities and the construction of master plan storm drain infrastructure improvements along with improvements for each project would adequately accommodate cumulative storm water flows in the Ontario Ranch area in the future.

Cumulative development is not expected to otherwise substantially degrade water quality. Substantial increases in runoff are not expected to occur, and compliance with NPDES requirements and CEQA mitigation would ensure that water quality in the watershed is not degraded by future development. Additionally, project compliance with NPDES requirements and the small amount of runoff would ensure that the project contribution to cumulative impacts is also less than significant. Therefore, the Project would have a less than significant cumulative impacts to polluted runoff and the capacity of storm water facilities. (Draft EIR, at p. 3-142 to p. 3-143.)

I. Land Use:

Impact: Does the proposed Project physically divide an established neighborhood. (Draft EIR, p. 3-146.)

Finding: The Armstrong Ranch Project will have no adverse impacts due to the division of any established neighborhood. (Draft EIR, p. 3-146.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project complies with the low density residential (2.1-5 du./ac) land use designation for the site as designated by TOP and will not divide an established community. (Draft EIR, p. 3-146.)

Impact: Does the proposed Project conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including but not limited to the general plan, specific plan, local coastal program, zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. (Draft EIR, p. 3-146.)

Finding: The project will not conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project regarding avoidance or mitigation of environmental effects. (Draft EIR, p. 3-146.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project complies with the low density residential (2.1-5 du./ac) land use designation for the site as designated by TOP. The project is also in compliance with the airport land use plan for Ontario Airport and Caltrans Division of Aeronautics California

Airport Land Use Planning Handbook for Chino Airport. (Draft EIR, p. 3-146.) The Project will not have any land use impacts because it complies with the land uses allowed by TOP. (Draft EIR, at p. 3-146.)

Impact: Does the proposed Project conflict with any applicable habitat conservation plan (HCP) or natural community conservation plan. (Draft EIR, p. 3-147.)

Finding: The Armstrong Ranch Project will not conflict with any HCP or Natural Community Conservation Plan. (Draft EIR, at p. 3-147.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Project is not located within the boundaries of an adopted habitat conservation plan or natural community conservation plan (Draft EIR, at p. 3-66). Therefore, the project will not conflict with or impact a habitat conservation plan or natural community conservation plan. (Draft EIR, at p. 3-147.)

Impact: Does the proposed Project have a cumulative impact to land use. (Draft EIR, at p.3-147.)

Finding: The Armstrong Ranch Project will not have significant cumulative land use impacts. (Draft EIR, at p. 3-147.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The proposed project complies with the land use and zoning designations designated for the site. Thus, the project will be compatible with adjacent properties and not have a cumulative impact by changing the land use and density of the development that is planned for the site by the City and encourage other property in the area to change their City designated land use. The project will not have any cumulative land use impacts. (Draft EIR, at p. 3-147.)

J. Mineral Resources

Impact: Will the proposed Project result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State. (Appendix A, at p. 30.)

Finding: The Armstrong Ranch Project will have no adverse impacts on mineral resources. (Appendix A, at p. 30.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There are no known mineral resources on the site or the immediate vicinity. The Project Site is not located within an area of locally important mineral resource recovery as delineated in TOP. The site is located in an area designated by the State of California Geologist as MRZ-3, which includes all land that the significance of mineral deposits cannot be determined from the available data. The site is not located within an

area that has been classified or designated as a mineral resource area by TOP and the project will not impact mineral resources. (Appendix A, at p. 30.)

Impact: Will the proposed Project result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.

Finding: The Armstrong Ranch Project will have no adverse impacts on any mineral resource recovery sites. (Appendix A., at p. 30.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There are no known mineral resources on the Project Site or immediate vicinity and TOP does not identify any known or suspected mineral resources in the project area that could be impacted. Thus, the project would not impact any locally important mineral resources. (Appendix A, at p. 30.)

K. Noise:

Impact: Will the Project expose persons to or generation of excessive groundborne vibration or groundborne noise levels. (Draft EIR, at p. 3-169.)

Finding: The Armstrong Ranch Project will not have any significant groundborne vibration or groundborne noise level impacts. (Draft EIR, at p. 3-170 to p. 3-171.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Because most of the project grading will be a minimum of 100 feet from the closest existing residences to the site and an infrequent event, the project will not generate any infrequent vibrations greater than the federal standard of 80 VdB. Therefore, the project will not have any significant groundborne vibration or groundborne noise impacts. (Draft EIR, at p. 3-170 to p. 3-171.)

Impact: Would the Project have a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project. (Draft EIR, at p. 3-170 to p. 3-171.)

Finding: The Armstrong Ranch Project will not have a permanent increase in the ambient noise levels in the project vicinity. (Draft EIR, at p. p. 3-171.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Although the Project will generate and increase both existing on- and off-site noise levels due to project traffic and daily on-site activities, none of the Project generated operational and long-term noise level increases will exceed City allowed noise levels or result in a substantial permanent increase in the ambient noise levels in the project vicinity. Permanent noise level impacts due to the project will be less than significant. (Draft EIR, at p. 3-171.)

Impact: For a project located within the noise impact zones of the airport land use compatibility plan for ONT and Chino Airports, would the project expose people residing or working in the project area to excessive noise levels. (Draft EIR, at p. 3-174.)

Finding: The Armstrong Ranch Project will not expose project residents to excessive noise from either Ontario or Chino Airports. (Draft EIR, at p. 3-174.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: While the Project is located near both the Chino and Ontario Airports, the Project is outside the 60 CNEL noise contour of the Ontario International Airport and outside the 55 CNEL noise contour of the Chino Airport. Planned residential, school and park uses would be compatible with and not be significantly impacted by excessive noise levels associated with Ontario International and Chino airports. (Draft EIR, at p. 3-174.)

Impact: For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels. (Draft EIR, at p. 3-174.)

Finding: The Armstrong Ranch Project will not be impacted by noise from a private airstrip. (Draft EIR, at p. 3-174.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: There are no private airstrips within close proximity of the Project that could impact project residents due to noise. (Draft EIR, at p. 3-174.)

Impact: Does the proposed Project have a cumulative noise impact. (Draft EIR, at p.3-174 to p. 3-175.)

Finding: The Armstrong Ranch Project will not have significant cumulative noise impacts. (Draft EIR, at p. 3-174.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: As shown in Table 3.11-5 (Draft EIR, at p. 3-165.), the project will contribute less than 1dB of noise level increase to the existing noise levels on the roadways adjacent to the project. While the overall cumulative noise level in the project area will increase due to cumulative traffic, the project will not have a significant cumulative traffic noise impact because the project will generate less than 1 dB of the cumulative noise level increase. Because the project will generate less than 1 dB noise to the existing ambient noise in the project area, the project noise levels are not cumulative considerable and will not have a significant cumulative noise impact. (Draft EIR, at p. 3-174.)

L. Population/Housing:

Impact: Will the proposed Project induce substantial population growth into the area, either directly or indirectly. (Draft EIR, at p. 3-183.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts on area population growth. (Draft EIR, at p. 3-183.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Although the Armstrong Ranch Project proposes residential development that represents growth, this growth was anticipated and planned for as part of the TOP EIR. The project is consistent with SCAG's population and housing forecasts for the City of Ontario and does not increase the City's future growth as planned by TOP and SCAG.

The project could encourage additional development in the immediate project vicinity due to the construction of master planned infrastructure including roads, sewer lines, water lines and storm drains by the project. However, any population increase due to new development would not be greater than the growth planned and allowed by TOP. The project will not directly or indirectly impact the population in the area. (Draft EIR, at p. 3-183 to p. 3-184.)

Impact: Will the proposed Project displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere. (Draft EIR, at p. 3-184.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts regarding displacement of existing housing. (Draft EIR, at p. 3-184.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Six single-family detached residential units on the site will be removed due to the project. There are existing replacement units available within the City of Ontario for alternative housing for the displaced residents. The residential units proposed by the project will also provide replacement housing for displaced residents. Because there is existing replacement housing in the City of Ontario for the displaced residents, the project will not have a significant impact to replacement housing. (Draft EIR, at p.3-184.)

Impact: Will the proposed Project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere. (Draft EIR, at p. 3-184.)

Finding: The Armstrong Ranch Project will have no substantial adverse impacts regarding displacement of people. (Draft EIR, at p. 3-184.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The development of the Project will displace the existing residents of the six single-family detached residential units on site, however there is an adequate housing inventory in Ontario to serve the housing needs of the residents displaced by the Project. (Draft EIR, at p.3-184.)

Impact: Will the proposed Project have a cumulative population and housing impact. (Draft EIR, at p. 3-184.)

Finding: The Armstrong Ranch Project will not have significant cumulative population or housing impacts. (Draft EIR, at p. 3-184.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: While the project will increase the development of additional residential development within the Ontario Ranch and a subsequent increase in population, the proposed residential units are consistent with the residential development planned for the site by TOP, and will not generate more units or increase population greater than planned by TOP and SCAG. As a result, the project will not have a cumulative impact to the City's population or housing project projections. (Draft EIR, at p. 3-184.)

M. Public Services:

Impact: Fire: Would the Project increase demand upon fire protection services. (Draft EIR, at p. 3-189.)

Finding: The Project will not significantly increase the demand for fire protection services. (Draft EIR, p. 3-189).

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Fire Department has stated the project would not impact existing fire protection facilities. The project will be required to meet all applicable current California Fire Code and California Building Code requirements for fire safety. The project would be consistent with the TOP goal for fire protection with compliance of the California Fire Code and California Building Code requirements for fire safety.

The project will construct a water system to provide an adequate potable water supply project and water pressure for fire suppression on the site. The Ontario Fire Department reviews and approves all development plans prior to construction to ensure that adequate fire flows and fire hydrants are available to meet fire suppression needs of the Department. In addition, the project would be required to comply with all applicable regulations of California Health and Safety Code Sections 1300 et seq. pertaining to fire protection services, including provision of state-mandated smoke alarms, fire extinguishers, appropriate building access, and emergency response notification systems. The compliance by the project with all applicable Fire Department laws and regulations would result in fire protection impacts less than significant. (Draft EIR, at p. 3-189.)

Impact: Police. Would the project increase demand upon police protection services. (Draft EIR, at p. 3-189.)

Finding: The Project will not significantly increase the demand for police protection services. (Draft EIR, p. 3-189).

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project is consistent with the TOP goal to protect and keep neighborhoods safe through prevention, suppression, community involvement and a system of continuous monitoring with the implementation of proposed measures in the project. The project would have less than significant impacts to police protection. (Draft EIR, at p. 3-189.)

Impact: Schools. Would the project increase demand upon school services. (Draft EIR, at p. 3-189.)

Finding: The Project would not significantly impact schools. (Draft EIR, p. 3-191).

Mitigation Measures: No mitigation measures are necessary.

Explanation: The schools that serve the project have capacity for the students that would be generated by the project. The additional students by the project would not significantly impact the capacity of any area schools. The construction of an elementary school proposed for Planning Area 7 would depend on the need for a school in this area and the ability of the school district desiring to construct a school to obtain funding. While no specific plans are proposed at this time for an elementary school for PA 7, an elementary school at this location meets the TOP goal to provide educational opportunities for residents.

The project would be required to pay State of California school impact fees prior to the start of construction. The school impact fees are used by the school district to provide classroom space as required. The payment of the required school impact fees to the respective school districts will reduce impacts to less than significant. (Draft EIR, p. 3-189 to p. 3-191.)

Impact: Parks and Recreation. Development of the project contributes to a shortage of parkland, which could result in the need for new or altered facilities. (Draft EIR, at p. 3-191.)

Finding: The Project would not contribute to a shortage of parkland and create a new for new or altered park and recreational facilities. (Draft EIR, p. 3-191.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project proposes to provide on-site parks at a ratio of 2 acres/1,000 residents. The trails and parks proposed by the project would meet the city's park requirement. In addition, the project will be required to pay the applicable Quimby parkland fee. The project would have a less than significant impact on parks. (Draft EIR, p. 3-191.)

Impact: Other Public Facilities. Would the proposed Project have an adverse impact on other public facilities, including libraries and museums. (Draft EIR, p. 3-185.)

Finding: The Armstrong Ranch Project will not impact other public facilities, including libraries and museums. (Draft EIR, p. 3-185.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The site is served by the City of Ontario, which provides a variety of public services. While the project residents are expected to incrementally increase the demand on public services, any increase by project residents for public facilities is anticipated to be less than significant. (Appendix A, at p. 33.)

Impact: Will the proposed Project have a cumulative impact to public services. (Draft EIR, at p. 3-191 to p. 3-192.)

Finding: The Armstrong Ranch Project will not have significant cumulative public service impacts. (Draft EIR, at p. 3-191 to p. 3-192.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: As new development occurs in the project area, there will be an increase in the demand for law enforcement and fire protection services, including the need for additional personnel, equipment, and other support facilities. However, an increase in the demand for police and fire services are routinely assessed by these agencies as dictated by TOP policy S3-3 (fire) and policies S7-7 (police) as well as part of an annual monitoring and budgeting process. The law enforcement and fire protection services in the City are anticipated to be adequate to serve existing development. These service providers have anticipated development in the project area and considered the project, in conjunction with other development in the area, in their planning processes. The cumulative impact, therefore, on police and fire services in the City, including the project area, would be less than significant.

The project in conjunction with the other cumulative projects would generate students that would increase the demand on local school districts and school facilities. The project, along with other foreseeable development in the future would be required to bear its fair share of the cost to provide additional educational facilities. As shown in Table 3-10, all of the schools serving the project have capacity for additional students. Any cumulative school capacity required beyond current excess capacities would be accomplished through the payment of statutory school fees by each developer. Per Government Code Sec. 65996, developer impact fees are the exclusive method for mitigating impacts on school facilities. The project would have a less than significant cumulative impact on school facilities.

The project in conjunction with other cumulative development in the area would result in increased demands on parkland and recreational facilities. Each project would include parkland within its boundary to accommodate increased parkland demands. Implementation of the City's policy for new residential development to meet the City's goal for park for the cumulative projects would improve the quantity and type of City parkland. Cumulative impacts would be less than significant, and the project would have a less than significant contribution to this effect. (Draft EIR, at p. 3-191 to p. 3-192.)

N. Transportation and Circulation:

Impact: Will the Project conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit. (Draft EIR, at p. 3-207.)

Finding: The Armstrong Ranch Project will not conflict with any transportation policies, plans, or programs supporting alternative transportation. (Draft EIR, at p. 3-207 to p. 3-209.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project will not significantly impact the area transportation system or not meet the City's level of service standard for area intersections and roadway segments. The project proposes non-motorized travel options to the project residents in the form of bicycle and pedestrian trails within and adjacent to the site and a pedestrian bridge that connects the Armstrong Ranch Specific Plan with the Countryside Specific Plan to the east and allow pedestrian access to each project. The project will have no impact to adopted alternative transportation policies, plans, or programs. (Draft EIR, at p. 3-207 to p. 3-209.)

Impact: Will the Project result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks. (Draft EIR, at p. 3-217.)

Finding: The Armstrong Ranch Project will not require a change in air traffic patterns traffic levels resulting in a substantial safety risk. (Draft EIR, at p. 3-217.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project does not propose any use that would require a change in the existing air traffic patterns at either Chino Airport or Ontario International Airport and impact the project. The project will not impact air traffic patterns at any area airports. (Draft EIR, at p. 3-217.)

Impact: Will the Project substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). (Draft EIR, at p. 3-217.)

Finding: The Armstrong Ranch Project would not substantially increase any hazards due to design features or incompatible uses. (Draft EIR, at p. 3-218.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project does not propose any street designs or curves that would result in a dangerous intersection. The Ontario Public Works Department will review all building

plans for compliance with its street design requirements prior to the issuance of building permit to ensure all project roadways and intersections meet City standards for roadway widths, turning radius, sight-distance requirements, etc. The project will not have any significant street design hazards. (Draft EIR, at p. 3-218.)

Impact: Will the Project result in inadequate emergency access. (Draft EIR, at p. 3-218.)

Finding: The Armstrong Ranch Project will not have any adverse emergency access impacts. (Draft EIR, at p. 3-218.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: All site plans will be reviewed by the Ontario Police Department and Ontario Fire Department for compliance with site access requirements, including secondary access points, adequate access driveway widths and design, adequate turn-around areas, etc. prior to site plan approval and the issuance of building permits. The compliance of all development plans with police and fire department requirements for adequate site emergency access will reduce potential emergency access impacts to less than significant. (Draft EIR, at p. 3-218.)

Impact: Will the Project result in inadequate parking capacity. (Draft EIR, at p. 3-218.)

Finding: The Armstrong Ranch Project will not have parking impacts. (Draft EIR, at p. 3-218.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project will be required to meet the parking requirements of the Ontario Municipal Code to provide on-site and guest parking as required. The project will not have any parking impacts. (Draft EIR, at p. 3-218.)

Impact: Will the Project conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities. (Draft EIR, at p. 3-218.)

Finding: The Armstrong Ranch Project will not impact any adopted policies, plans or programs regarding public transit, bicycle, or pedestrian facilities. (Draft EIR, at p. 3-218.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The Armstrong Ranch Specific Plan will be required to incorporate all forms of alternative transportation required by The Ontario Plan. The project proposes to provide multipurpose trails through and adjacent to the site for pedestrian and bicycle access. Multipurpose trails are proposed along the east side of Vineyard Avenue and the north side of Chino Avenue adjacent to the site. Class II bike lanes are proposed along both the north and south sides of Riverside Drive north of the site. Charlotte Armstrong trail will extend east-west through the entire site and provide pedestrian and bicycle access throughout the site. A pedestrian bridge will be constructed across Cucamonga Channel at the east end of the site and connect with the existing Countryside Specific

Plan development east of the channel. The pedestrian bridge will allow residents of both Armstrong Ranch and Countryside access to park and recreational amenities in the area. The pedestrian bridge will also allow Countryside residents to walk to the proposed elementary school proposed for PA 7 of Armstrong Ranch and reduce some motor vehicle trips. Therefore, the project will not impact any adopted alternative transportation policies, plans, or programs. (Draft EIR, at p. 3-218.)

O. Utilities/Service Systems

Impact: Will the Project exceed wastewater treatment requirements of the Santa Ana Regional Water Quality Control Board. (Draft EIR, at p. 3-228.)

Finding: The Armstrong Ranch Project will not exceed any wastewater requirements. (Draft EIR, at p. 3-228.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project will comply with all provisions of wastewater permits, as required by the Santa Ana Regional Water Quality Control Board, for all wastewater discharge. Through compliance with the City's wastewater discharge permit, the Project would not exceed the Santa Ana Regional Water Quality Control Board's wastewater treatment requirements and the wastewater treatment requirements of the project would be less than significant. (Draft EIR, at p. 3-228.)

Impact: Will the Project require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. (Draft EIR, at p. 3-228.)

Finding: The Armstrong Ranch Project will not require the construction of new or the expansion of existing water or wastewater treatment facilities that will serve the site. (Draft EIR, at p. 3-228 to p. 3-229.) As discussed in Impact HYD-5, the project will construct both on-site and off-site storm drain facilities to collect, transport and discharge project runoff to the Cucamonga Creek Channel south of the site. The off-site storm drain facilities will be consistent with master plan storm drain facilities and constructed in accordance with the standards set by the City of Ontario and the San Bernardino County Flood Control District. As also stated on page 3-140 of the DEIR, "plans for grading, drainage, erosion control and water quality will be reviewed by the City Engineer prior to issuance of grading permits and the compliance of on- and off-site drainage improvements with all applicable City and County standards would reduce potential drainage impacts of the project to less than significant. As a result, the construction of the proposed storm drain facilities will not cause any significant environmental impacts and any impacts associated with their construction is less than significant. (Final EIR, at p. 2.0-7.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The project would be required to construct new domestic water mains, including water master plan facilities, to provide a loop water system to serve the project. The project will comply with the City of Ontario Water Master Plan. The Water Supply

Assessment for the project states the City has an adequate future water supply to serve the project and the use of recycled water to irrigate parks, street landscaping, private pocket parks and other open space will reduce future needs for potable water supply. The RP-5 wastewater treatment plant has adequate capacity to treat the wastewater generated by the project. The project will be required to construct both on-site and master plan wastewater collection facilities to transport wastewater from the site to the RP-5 wastewater treatment plant. (Draft EIR, at p. 3-228 to p. 3-229.)

Impact: Will the Project require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

Finding: The Armstrong Ranch Project will not require or result in the construction of new storm water drainage facilities or expansion of existing facilities (Draft EIR, at p. 3-140.)

Mitigation Measures: No mitigation measures are necessary.

Impact: Will the Project have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed. (Draft EIR, at p. 3-229.)

Finding: The Armstrong Ranch Project will not have any substantial adverse impacts on water supplies. (Draft EIR, at p. 3-329 to p. 3-330.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The City's Urban Water Management Plan 2035 accounts for the water that is estimated to be consumed by the Project, which is estimated to be approximately 606-acre feet of water per year (Draft EIR Table 3.15-1, p. 3-330.). Based on the WSA prepared for the project, the future water supplies that are available to the City during normal, single dry, and multiple dry water years during a 20-year project are sufficient to meet the project water demand of the project in addition to the City existing and planned future uses, including agricultural and manufacturing uses. The water consumption impacts of the project will be less than significant. (Draft EIR, at p. 3-329 to p. 3-330.)

Impact: Will the Project result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments. (Draft EIR, at p. 3-230.)

Finding: The Project would not have a significant impact on wastewater treatment capacity and wastewater facilities. (Draft EIR, p. 3-230).

Mitigation Measures: No mitigation measures are necessary.

Explanation: The current capacity of the Inland Empire Utilities Agency's RP-5 wastewater treatment plant has a current capacity of approximately 15 million gallons per day (mgd) with existing flows at approximately 8 mgd. The RP-5 wastewater treatment plant has adequate capacity to serve the wastewater needs of the project without any significant capacity impacts. (Draft EIR, p. 3-230.)

Impact: Will the Project be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs. (Draft EIR, p. 3-230.)

Finding: The Armstrong Ranch Project will not have any significant solid waste disposal impacts. (Draft EIR, at p. 3-230.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: Solid waste collected from the Project would be sent to the West Valley Material Recovery Facility and transferred to El Sobrante Landfill. The existing permitted capacity of the El Sobrante Landfill is 10,000 tons per day (tpd) and a remaining capacity of approximately 184,930,000 tons. The 6 tons per day of solid waste generated by the project (Draft EIR, at p. 3-231, Table 3.15-2) upon buildout represent less than 0.06 percent of the daily tonnage hauled to the landfill. The Project will be required to recycle urban waste in compliance with AB 939. As such, the solid waste impacts of the project will be less than significant. (Draft EIR, at p. 3-230 to p. 3-231.)

Impact: Will the Project comply with federal, state, and local statutes and regulations related to solid waste. (Draft EIR, p. 3-231.)

Finding: The Armstrong Ranch Project will not have any impacts on compliance with local solid waste statutes and regulations. (Draft EIR, p. 3-231.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: As required by Title 6, Chapter 3 of the Ontario Municipal Code, the City must comply with State law (AB 939) to reduce solid waste generation, promote reuse and require solid waste collection for recycling and composting. As such, the City will require the project to reduce solid waste generation and recycle materials as much as feasible to reduce solid waste. Because the project will be required by the City to recycle, the project will not have a significant impact to any federal, state or local statutes or regulations related to solid waste. (Draft EIR, p. 3-231.)

Impact: Will the proposed Project have a cumulative impact to public utilities. (Draft EIR, at p.3-231 to p.3-232.)

Finding: The Armstrong Ranch Project will not have significant cumulative public utility impacts. (Draft EIR, at p. 3-231 to p. 3-232.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: A Water Supply Assessment was prepared for the project and determined the City has an adequate water supply to serve the long-term water needs of the project. The water supply assessment took into account the proposed project as well as other planned future development in Ontario and determined that city's water supply is adequate to serve Ontario's cumulative water needs to the year 2030. As such, impacts related to water supply would not be cumulatively considerable.

The wastewater generated by the project would not significantly impact the wastewater treatment capacity of the IEUA's RP-5 treatment plant, which has more than 7 mgd of unused capacity with adequate capacity to handle the peak sewage flows of the project. In addition, all discharges to the sewer from the project would be required to meet IEUA's Wastewater Discharge Regulations. Cumulative project reviews would ensure that all discharges to the sewer from the cumulative projects would meet IEUA's Wastewater Discharge Regulations issued by the Local Regional Water Quality Control Board. As such, impacts on wastewater would not be cumulatively considerable.

The City of Ontario is the exclusive hauler of all solid waste for the City and has indicated that capacity at El Sobrante Landfill is adequate to accommodate the project's solid waste disposal needs. The implementation of source reduction measures, such as a recycling plan, that would be implemented on a project-specific basis would partially address landfill capacity issues by diverting additional solid waste at the source of generation. The development associated with the cumulative projects within the City would not be cumulatively considerable. (Draft EIR, at p. 3-231 to p. 3-232.)

SECTION III

IMPACTS MITIGATED TO A LEVEL OF LESS THAN SIGNIFICANT

The City Council hereby finds that mitigation measures have been identified in the EIR that will avoid or substantially lessen the following potentially significant environmental impacts to a less than significant level. This section also sets out in greater detail specific impacts that were determined to be less than significant even without the implementation of mitigation measures. The potentially significant impacts and the mitigation measures which will reduce them to a less than significant level are set out in the EIR and summarized below.

A. Air Quality:

Impact: Will the Project violate any air quality standard or contribute substantially to an existing or projected air quality violation regarding particulate matter emissions. (Draft EIR, at p. 3-41.)

Finding: Concurrent Demolition and Site Preparation as well as concurrent Grading, Wet Utility and Paving will generate PM2.5 emission greater than the Localized Significance Threshold. (Draft EIR, Table 3.3-9, p. 3-44 to p.3-45.). Changes or alterations have been required to the Project that avoid or substantially lessen the significant environmental effect regarding PM2.5 identified in the Final EIR. (Draft EIR, p. 3-50 to p. 3-51.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

Mitigation Measure AQ-1-SP	All heavy duty equipment with engines with a rating of 50 horsepower (hp) or greater shall be compliant with CARB/EPA Tier IV Final emissions standards, if readily available. If Tier IV equipment is not readily available, all heavy-duty equipment with engines with a rating of 50 horsepower or greater compliant with Tier III equipment shall be an acceptable replacement.
Mitigation Measure AQ-2-SP	All grading and construction activities shall meet SCAQMD's Rule 403 to address fugitive dust emissions.
Mitigation Measure AQ-7-SP	During construction, the construction contractor shall ensure that all haul trucks transporting cut or fill, dirt or debris, off-site will be covered to reduce windblown dust and spills.
Mitigation Measure AQ-8-SP	The contractor shall apply non-toxic soil stabilizers according to manufacturers' specifications to all inactive construction areas (previously graded areas inactive for ten days or more).
Mitigation Measure AQ-9-SP	The contractor shall apply water three times daily, or non-toxic soil stabilizers according to manufacturers' specifications to all unpaved parking or staging areas or unpaved road surface.
Mitigation Measure AQ-10-SP	During construction, traffic speeds on all unpaved roads within the project shall be limited to 15 mph or less.
Mitigation Measure AQ-11-SP	Prior to the start of any demolition or grading, the project developer's contractor shall display at the site the phone number of a contact person that will be available 24-hours a day to call with complaints related to PM10.

Explanation: During project grading, state NOx and Localized Significant Threshold for PM2.5 emissions would be exceeded (Draft EIR, Table 3.3-8, p. 3-44 and Table 3.3-9, p. 3-44 to p. 3-45.). Sensitive receptors have the potential to be affected by NOx and dust generated during short-term construction activities. Implementation of Mitigation Measures AQ-1-SP through AQ-3-SP, as well as Mitigation Measures AQ-7-SP through AQ-10-SP would reduce dust impacts to less than significant levels. (Draft EIR, p. 3-50 to p. 3-51, Final EIR, p. 3.0-7 – 3.0-13.) As indicated on page 3-43 of the Draft EIR and in Table 3.3-7, Total Construction Emissions by Activity, PM10 emissions during construction do not exceed the SCAQMD significance threshold of 150 lbs./day and are considered less than significant. Nonetheless, the City added Mitigation Measure AQ-11-SP in the Errata to the Draft EIR and the Mitigation and Monitoring Program for the Project to require the project developer's

contractor to display at the site the phone number of a contact person that will be available 24-hours a day to call with complaints related to PM10 emissions and other construction related concerns. (Final EIR, p. 3.0-11.)

Impact: Will the Project violate any air quality standard or contribute substantially to an existing or projected air quality violation regarding NOx emissions. (Draft EIR, at p. 3-41.)

Finding: Nitrogen oxides (NOx) emissions will exceed the 100 lbs/day significance threshold during project grading. (Draft EIR, Table 3.3-7 and Table 3.3-8, p. 3-43 to p.3-44.). Changes or alterations have been required to the Project that avoid or substantially lessen the significant environmental effect regarding NOx identified in the Final EIR. (Draft EIR, p. 3-50 to p. 3-51; Final EIR, p. 2.0-1 – p. 2.0-3.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

AQ-1-SP All heavy duty equipment with engines with a rating of 50 horsepower (hp) or greater shall be compliant with CARB/EPA Tier IV Final emissions standards, if readily available. If Tier IV equipment is not readily available, all heavy-duty equipment with engines with a rating of 50 horsepower or greater compliant with Tier III equipment shall be an acceptable replacement.

AQ-2-SP All grading and construction activities shall meet SCAQMD's Rule 403 to address fugitive dust emissions.

AQ-4-SP All on-site construction equipment shall meet the following criteria:

- All off road diesel-powered construction equipment 50 hp or greater shall meet the CARB/EPA Tier IV Final emissions standards, if readily available. If Tier IV equipment is not readily available, Tier III equipment shall be an acceptable replacement. In addition, all construction equipment shall be outfitted with BACT devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.
- A copy of each unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided to the City at the time of mobilization of each applicable unit of equipment.
- Encourage construction contractors to apply for SCAQMD "SOON" funds. Incentives could be provided for those construction contractors who apply for SCAQMD "SOON" funds. The "SOON" program provides funds to accelerate clean-up of off-road diesel vehicles, such as heavy-duty construction equipment. More information on this program can be found at the following website:
<http://www.aqmd.gov/home/programs/business/business-detail?title=offroad-diesel-engines>

- AQ-5-SP The project contractor shall use 2010 and newer diesel haul trucks (e.g., material delivery trucks and soil import/export) and if the City determines that 2010 model year or newer diesel trucks cannot be obtained, the City shall require trucks that meet EPA 2007 model year NOx emissions requirements.
- AQ-6-SP The project contractor shall use electricity from power poles rather than temporary diesel or gasoline power generators, when feasible.
- AQ-7-SP During construction, the contractor shall ensure that all haul trucks transporting cut or fill, dirt or debris, off-site will be covered to reduce windblown dust and spills.
- AQ-8-SP The contractor shall apply non-toxic soil stabilizers according to manufacturers' specifications to all inactive construction areas (previously graded areas inactive for ten days or more).
- AQ-9-SP The contractor shall apply water three times daily, or non-toxic soil stabilizers according to manufacturers' specifications to all unpaved parking or staging areas or unpaved road surface.
- AQ-10-SP During construction, traffic speeds on all unpaved roads within the project shall be limited to 15 mph or less.
- AQ-11-SP Prior to the start of any demolition or grading, the project developer's contractor shall display at the site the phone number of a contact person that will be available 24-hours a day to call with complaints related to PM10 emissions and other construction related concerns.
- AQ-12-SP The project contractor shall be responsible to restrict all project related construction equipment, including on- and off-site construction equipment, to a maximum idling time of five minutes. Any construction equipment idling more than five minutes shall be turned off.
- AQ-13-SP Temporary grid electricity shall be provided to the site prior to the start of construction.
- AQ-14-SP Prior to the start of grading, the contractor shall submit a Heavy-Duty Off-Road Vehicle Plan to the Building Department and include the following measures. The city inspector shall ensure the contractor complies with the requirements of the Heavy-Duty Off-Road Vehicle Plan during project grading to include the following:
- All diesel vehicles and construction equipment on-site shall be fueled with ultra-low sulfur diesel or a biodiesel blend approved by the original engine manufacturer with sulfur content of 15 parts per million (ppm) or less.

- Electric and/or hybrid construction equipment shall be used in place of diesel and gasoline powered equipment, when available and comparable.
- A construction vehicle inventory traffic system that includes the following:
 - Contractor and subcontractor name and address, plus contact person responsible for the vehicles or equipment;
 - Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation;
 - For the emission control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date and hour-meter reading on installation date.
- The contractor shall submit to the developer a monthly report that for each on-road and off-road construction equipment includes the following information:
 - Hour meter readings on arrival on-site, the first and last day of every month and on-and off-site date.
 - Any problems with the equipment or emission controls;
 - Certified copies of fuel deliveries for the time period that identify”
 - Source of supply
 - Quantity of fuel
 - Quality of fuel, including sulfur content (percent by weight)
 - Emissions from all off-road diesel-powered equipment used on the project site do not exceed 40% opacity for more than three minutes in any one hour. In addition,
 - Any equipment found to exceed 40 percent opacity (or Ringlemann 2.0) shall be repaired immediately.
 - Non-compliant equipment will be documented and a summary provided to the City of Ontario monthly.
 - A visual survey of all in-operation equipment shall be made at least weekly.
 - A monthly summary of the visual survey result shall be submitted throughout the duration of the project, except that the monthly summary shall not be required for any 30-day period in which no construction activity occurs. The monthly summary shall include the

quantity and type of vehicles surveyed as well as the dates of each survey.

Explanation: During project grading, state NOx and Localized Significant Threshold for PM2.5 emissions would be exceeded (Draft EIR, Table 3.3-8, p.3-44 and Table 3.3-9, p. 3-44 to p. 3-45.). Sensitive receptors have the potential to be affected by NOx and dust generated during short-term construction activities. Implementation of Mitigation Measures AQ-1-SP and AQ-2-SP, as well as Mitigation Measures AQ-4-SP through AQ-14-SP would reduce NOx impacts to less than significant levels. (Draft EIR, p. 3-50 to p. 3-51, Final EIR, p. 3.0-7 to p. 3.0-13.)

B. Biological Resources:

Impact: Will the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or the U.S. Fish and Wildlife Service. (Draft EIR, p. 3-60.)

Finding: Changes have been required to the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, p. 3-60 to p.3-64.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

BIO-1-SP A preconstruction presence/absence burrowing owl survey shall be conducted within 14 days prior to the start of any demolition, grading or construction of each phase of development (including clearing and grubbing) for Planning Area's 2-5. Each pre-construction survey shall include the land proposed for development within the phase and any associated off-site improvements. If burrowing owls are detected, a mitigation and eviction plan consistent with CDFW protocol for that phase shall be provided to CDFW for approval.

BIO-2-SP The removal of any vegetation by the project shall occur outside of the nesting season (January 1 through August 31). If avoidance of the nesting season is not feasible, a qualified biologist shall conduct a nesting bird survey within three days prior to the disturbance of any vegetation, including disking, demolition, grading or construction. If active nests of native bird species are identified, the biologist shall establish suitable buffers around the nests, and the buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. The buffer shall be 300 feet for raptors and 150 feet for songbirds; unless specifically determined to be less by a qualified biologist that is familiar with the nesting phenology of the nesting species.

BIO-3-SP Prior to the demolition or grading within PA's 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct a focused survey for burrowing owl following CDFW's March 2012 recommended guidelines and shall consist of four visits between February 15 and July 15. If the species

is found, an eviction plan shall be drafted and submitted to CDFW for approval. Eviction shall only occur when the owls are not nesting. If the species is not found during the focused survey, and the focused survey is completed more than 14 days prior to ground disturbance, a preconstruction presence/absence survey for burrowing owl within 14 days prior to each phase of development (including clearing and grubbing) shall be completed to ensure no mortality to the species occurs (CDFW 2012). If burrowing owls are detected, a mitigation and eviction plan for that phase will be drafted and provided to the CDFW for approval. Eviction shall occur only when the owls are not nesting.

BIO-4-SP Prior to the demolition of any buildings, site improvements, grading or construction activities within Planning Areas 1, 6A, 6B and 7, a focused Delhi Sands Flower-loving Fly (DSFF) habitat suitability survey shall be completed. If the results of the focused habitat survey indicate the potential for DSFF to be present and impacted by the project, a protocol survey shall be completed to determine the presence of the DSFF. If DSFF is found to be present, the project developer shall complete the measures required to protect the species on the site, or provide off-site mitigation in compliance with established protocols acceptable to USFWS.

BIO-5-SP Prior to any demolition or grading within PA's 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct a critical habitat survey. If any critical habitat is identified, the project developer shall provide suitable critical habitat at a 1:1 ratio or a ratio acceptable to CDFW.

BIO-6-SP Prior to any demolition or grading within PA's 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct Loggerhead Shrike and Special Status bat surveys. If present, the project developer shall complete measures to protect the species in compliance with established protocols and regulations and approved by CDFW.

Explanation:

Impacts to Burrowing Owl Habitat: While no burrowing owls were present during the on-site surveys for PAs 2-5, and none were visually observed on lands where physical access was not provided (PAs 1, 6A, 6B and 7), owls could be present within PAs 1-7 at the time of project grading and construction. As indicated in the Draft EIR, p. 3-61, although burrowing owls were not present during the on-site surveys for PAs 2-5 and none were visually observed on (PAs 1, 6A, 6B and 7) where site access was not provided, owls could be present at the time of project grading and construction. Accordingly, the Draft EIR includes detailed Mitigation Measures BIO-1-SP and BIO-3-SP that requires pre-construction surveys to determine if burrowing owls are present 14 days prior to the start of any grading or construction and California Department of Fish and Wildlife protocol be followed should burrowing owls be found to reduce potential borrowing owl impacts to less than significant. (Draft EIR, p. 3-67 to p. 3-68.)

Impacts to Native Nesting Bird Habitat: The site contains vegetation, open land, and structures that potentially provide suitable nesting sites for species legally protected as

native migratory birds. Due to the limited habitat value of the project site for such birds and the commonness of the species potentially impacted, any impact to native birds by the project would not be considered a significant impact. However, direct impacts to native nesting birds are prohibited under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code. The project has the potential to impact active native bird nests if existing on-site vegetation is removed during the nesting season, which typically extends from January 1 to August 31. (Draft EIR, p. 3-63.) The implementation of mitigation measure BIO-2-SP would reduce potential native nesting bird habitat impacts to less than significant. (Draft EIR, p. 3-67 to p. 3-68.)

Impacts to Loggerhead Shrike: Migrant loggerhead shrikes may visit the project site on occasion, as it is relatively open. The site may provide foraging habitat for the loggerhead shrike. However, the shrike is not expected to nest on the site due to the lack of suitable nesting habitat on the areas surveyed. The removal of potential loggerhead shrike foraging habitat on the surveyed areas due to the project would not be a significant impact, but the removal of loggerhead shrike foraging habitat on the areas of the site that have not been surveyed, if present, could have a potentially significant impact. (Draft EIR, at p. 3-61 to p. 3-62.) The implementation of mitigation measure BIO-6-SP would reduce potential Loggerhead Shrike impacts to less than significant. (Draft EIR, p. 3-68.)

Impacts to Special-Status Bats: There are three species of bats (western mastiff bat, big free-tailed bat, and western yellow bat) with a low potential to forage for insects on the site. The site is potentially suitable for foraging, given the broad array of conditions utilized by these species, but does not show potential to be valuable or productive for the species given routine disturbances to the lands. The site supports a few fan palms and only marginal potential foraging habitat. Thus, the potential for occurrence of a few individuals is possible. The areas of the site that were not surveyed could include foraging habitat that supports one or all three species of bats known to exist in the area and the removal of suitable foraging habitat could have a significant impact. (Draft EIR, p. 3-62.) The implementation of mitigation measure BIO-6-SP would reduce potential special-status bat impacts to less than significant. (Draft EIR, at p. 3-68.)

Impacts to Delhi Sands Flower-loving Fly (DSFF): Based on site surveys, PAs 2-5 are considered to be unsuitable for Delhi sands flower-loving fly. In view of the site's highly degraded and isolated condition, exposure to significant surface disturbances, and analyses of correlative habitat information from a wide range (e.g., relatively disturbed to more natural habitats) of occupied Delhi sands flower-loving fly habitats in the region, the lands do not contain habitat suitable to support or sustain a viable Delhi sands flower-loving fly population. PAs 1, 6A, 6B and 7 that were not surveyed due to site access, a visual and satellite imagery analysis determined the properties have the same type and level of disturbances as PAs 2-5. However, because PAs 1, 6A, 6B and 7 were not surveyed, it cannot be confirmed unless a focused habitat suitability evaluation is performed by a permitted Delhi sands flower-loving fly biologist. Because it has not been confirmed that PAs 1, 6A, 6B, and 7 are unsuitable for the species, development of the project may significantly impact Delhi sands flower-loving fly, if present. The implementation of mitigation measure BIO-4-SP would reduce potential DSFF impacts to less than significant. (Draft EIR, at p. 3-68.)

Impacts to Critical Habitat: There is no federally designated critical habitat on PAs 2-5 that were surveyed. For those areas that were not surveyed, including PAs 1, 6A, 6B and 7, critical habitat may exist and the removal of any critical habitat could potentially have significant impacts. The implementation of mitigation measure BIO-5-SP would reduce potential critical habitat impacts to less than significant. (Draft EIR, p. 3-60 to p. 3-64, p. 3-68.)

Impact: Does the proposed Project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. (Draft EIR, at p. 3-66.)

Finding: Changes have been required to the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, p. 3-66.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

BIO-3-SP Prior to the demolition or grading within PAs 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct a focused survey for burrowing owl following CDFW's March 2012 recommended guidelines and shall consist of four visits between February 15 and July 15. If the species is found, an eviction plan shall be drafted and submitted to CDFW for approval. Eviction shall only occur when the owls are not nesting. If the species is not found during the focused survey, and the focused survey is completed more than 14 days prior to ground disturbance, a preconstruction presence/absence survey for burrowing owl within 14 days prior to each phase of development (including clearing and grubbing) shall be completed to ensure no mortality to the species occurs (CDFW 2012). If burrowing owls are detected, a mitigation and eviction plan for that phase will be drafted and provided to the CDFW for approval. Eviction shall occur only when the owls are not nesting.

BIO-4-SP Prior to the demolition of any buildings, site improvements, grading or construction activities within Planning Areas 1, 6A, 6B and 7, a focused Delhi Sands Flower-loving Fly (DSFF) habitat suitability survey shall be completed. If the results of the focused habitat survey indicate the potential for DSFF to be present and impacted by the project, a protocol survey shall be completed to determine the presence of the DSFF. If DSFF is found to be present, the project developer shall complete the measures required to protect the species on the site, or provide off-site mitigation in compliance with established protocols acceptable to USFWS.

Explanation: The project is consistent with the type and density of development allowed for the site by TOP. Because there are no known rare, endangered or sensitive plants or animals on the areas of the site that have been surveyed and measures are recommended to reduce potential impacts to the Delhi sands flower-loving fly, burrowing owls and nesting birds to less than significant, the project will not have any significant

conflicts with TOP policies to protect biological resources to those areas that have been surveyed.

None of the existing biological resources present on the areas of the site that have been surveyed and will be removed or disturbed by the project are protected by a local or city ordinance. The project will not have any conflicts with or be impacted by a tree preservation policy or ordinance for those areas surveyed. As such, project impacts upon local applicable policies protecting biological resources for the areas surveyed would be less than significant. For those areas of the site that have not been surveyed, the implementation of mitigation measures BIO-3-SP and BIO-4-SP would reduce impacts to less than significant. (Draft EIR, at p. 3-66.)

Impact: Does the proposed Project have a cumulative impact to biological resources. (Draft EIR, at p.3-66 to p. 3-67.)

Finding: With the implementation of Project-Specific Mitigation Measure, the Armstrong Ranch Project will not have significant cumulative biological resource impacts. (Draft EIR, at p. 3-66 to p. 3-67.)

Mitigation Measures: Implement BIO-1-SP through BIO-4-SP.

Explanation: The potential build-out of the cumulative projects is approximately 3,590 acres (City of Ontario). Mitigation measures have been approved along with the project approvals of the cumulative projects to mitigate the potential biological impacts of each project, thus the cumulative impacts have been reduced.

The primary effects of the Armstrong Ranch Specific Plan, when considered with other projects in the Region (as defined above), would be the direct cumulative loss of open space, vegetation important to raptors, habitat of sensitive or special-status wildlife species, and regional movement corridors that support migratory avian species. However, as discussed in the above biological assessment for the Armstrong Ranch Specific Plan, the project will not significantly impact any sensitive, rare, or endangered plant or animal species. Therefore, while other cumulative projects may individually have significant biological resource impacts, the proposed project will not have any significant cumulative biological impacts.

The development of the Armstrong Ranch Specific Plan in combination with the cumulative projects could lead to increased disturbance to the Delhi Sands Flower-loving fly, burrowing owl, native nesting birds, critical habitat, loggerhead shrike and special status bats and have cumulative biological impacts. The implementation of the project recommended mitigation measures will reduce potential significant cumulative biological impacts to less than significant levels because the measures, when implemented, will reduce project impacts to less than significant. (Draft EIR, at p. 3-66 to p. 3-67.)

C. Cultural Resources:

Impact: Will the Project cause a substantial adverse change in the significance of a (1) historical or (2) archaeological resource as defined in Section 15064.5 (Draft EIR, at p. 3-78 to p. 3-79.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-79.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

CUL-1-SP Prior to the demolition of any buildings on the property at 9381 East Riverside Drive, a professional photographer meeting the Secretary of Interior Standards minimum qualifications, under the direction of the project archaeologist/historian, shall take high quality digital and/or film photographs of the exterior of the surviving buildings to document the existing structures and the digital and/or film photographs pursuant to the National Park Service HABS/HAER standards presented to the City of Ontario for archiving.

CUL 2-SP An archeologist shall be retained to observe all grading activities and conduct salvage excavation of any archeological resources deemed necessary by the archeologist. The archeologist shall be present at a pre-grading conference, establish procedures for archeological resource surveillance during grading and construction, and establish, in cooperation with the City, procedures to temporarily halt or redirect all work to allow the sampling, identification and evaluation of all resources as deemed necessary by the archeologist. If archeological features are discovered, the archeologist shall report such findings to the Ontario Planning Director. If the archeological resources are found to be significant, the archeologist shall determine the appropriate actions, in cooperation with the City that shall be taken for exploration and/or salvage in compliance with CEQA Guidelines Section 15064.5(f).

Explanation: None of the properties within the Armstrong Ranch Specific Plan, other than the buildings on the property at 9381 East Riverside Drive, are candidates for or considered a historical resource. A mitigation measure is recommend to record and document the architecture of the buildings at 9381 East Riverside Drive. Within the archaeological survey of the portions of the site that allowed site access, no archaeological sites or surface indicators identified any archaeological resources. However, there could be archaeological resources present on the areas of the site that were not surveyed, which included PAs 6A, 6B and 7. Therefore, mitigation is recommended to reduce archaeological resources uncovered during project grading and construction to less than significant. Mitigation Measures CUL 1-SP and CUL 2-SP will reduce impacts to cultural resources. (Draft EIR, at p. 3-81.)

Impact: Will the Project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. (Draft EIR, at p. 3-79.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-79.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

CUL-3(a)-SP Prior to site preparation or grading activities, construction personnel shall be informed of the potential for encountering paleontological resources. This shall include the provision of written materials to familiarize personnel with the range of resources that might be expected, the type of activities that may result in impacts, and the legal framework of cultural resources protection. All construction personnel shall be instructed to stop work in the vicinity of a potential discovery, creating a 50' radius buffer, until a qualified paleontologist assesses the significance of the find and implements appropriate measures to protect or scientifically remove the find. Construction personnel shall also be informed that unauthorized collection of paleontological resources is prohibited.

CUL-3(b)-SP Prior to site preparation and grading activities, the applicant shall retain a qualified (member of the American Society of Vertebrate Paleontologists) paleontologist to monitor earth-disturbing activities. No paleontological monitoring is required for excavation up to a depth of five feet. Periodic monitoring by a paleontologist shall be done during excavation from a depth of five feet to ten feet. Full time monitoring by a paleontologist is required for all excavation below 10 feet, or if fossiliferous soils are discovered at shallower depths. A paleontologist shall also be available on-call to assess any potential resources that may be exposed or discovered when the paleontologist is not present.

CUL-3(c)-SP For any potential paleontological resource uncovered during construction, a qualified paleontologist shall first determine whether it is a "unique resource". If the paleontological resource is determined to be a "unique resource," the paleontologist shall formulate a mitigation plan in consultation with the City that satisfies the requirements off the Conformable Mitigation Guidelines of the Society of Vertebrate Paleontology (News Bulletin Number 163, January 1995).

- If the paleontologist determines that the paleontological resource is not a unique resource, the paleontologist may record the site and submit the recordation form to the Natural History Museum of San Bernardino County.
- The paleontologist shall prepare a report of the results of any study prepared as part of a mitigation plan, following accepted professional practice. Copies of the report shall be submitted to the City of Ontario and to the Natural History Museum of San Bernardino County.

Explanation: Although no known fossils have been recovered on the Armstrong Ranch Specific Plan site, due to the existing rock formations on the site and the area, there is a moderate to high possibility of paleontological resources to be present and disturbed during project grading. Mitigation measures CUL-3(a)-SP, CUL-3(b)-SP and CUL-3(c)-SP are recommended to reduce potential paleontological impacts by the project to less than significant. (Draft EIR, at p. 3-79.)

Impact: Will the Project disturb any human remains, including those interred outside of formal cemeteries. (Draft EIR, at p. 3-79.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-79 to p. 3-80.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

CUL-4-SP In the event of the discovery of a burial, human bone, or suspected human bone, all excavation or grading in the vicinity of the find shall halt immediately, the area of the find shall be protected, and the University immediately shall notify the San Bernardino County Coroner of the find and comply with the provisions of P.R.C. Section 5097 with respect to Native American involvement, burial treatment, and re-burial, if necessary.

Explanation: No formal cemeteries are known to either presently exist or existed in the past within the project boundary. Any human remains encountered would likely come from archaeological or historical archaeological contexts. However, archaeological resources are known in the general Ontario Plan area, and the potential exists for resources to be present within any areas of the site that have not been surveyed. The incorporation of Mitigation Measure CUL-4-SP will reduce potential impacts to uncovered human remains during project grading and construction to less than significant. (Draft EIR, at p. 3-79 to p. 3-80.)

Impact: Would the proposed Project have a cumulative impact to cultural resources. (Draft EIR, at p. 3-80 to p. 3-81.)

Finding: The Armstrong Ranch Project will not have significant cumulative cultural resource impacts. (Draft EIR, at p. 3-80 to p. 3-81.)

Mitigation Measures: No mitigation measures are necessary.

Explanation: The mitigation measures discussed above will be imposed on the project to ensure that important scientific information provided by the resources of the history and prehistory would be retained. Consequently, the contribution of potential impacts from the proposed project to the cumulative destruction of subsurface cultural resources throughout the City would be less than significant. Additionally, the project does not propose the removal of any historic resources. Therefore, the project's contribution to

impacts on historic resources would not be cumulatively considerable and cumulative impacts would be less than significant. (Draft EIR, at p. 3-80 to p. 3-81.)

D. Greenhouse Gas:

Impact: Will the Project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment. (Draft EIR, at p. 3-104.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-104.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

GHG – 1-SP Prior to the issuance of the first building permit, the City shall ensure that all GHG reduction measures shown in Table 3.7-1 are incorporated into the project at the appropriate levels, including tentative tract map approval, issuance of grading permits, issuance of building permits and certificates of occupancy permits. At the City's discretion, alternative reduction measures from Table 1, Appendix B of the City of Ontario Community Climate Action Plan can be substituted for measures in Table 3.7-1, or any future measures approved by the City, with the same or greater point value.

Explanation: The Project is estimated to generate approximately 18,500 MT CO₂EQ per year. Per Appendix B of the City of Ontario Community Climate Action Plan (CCAP), the project will not result in a significant individual or cumulative impact if it implements 100 points worth of GHG reduction measures. Table 3.7-1 (Draft EIR, at p. 3-104) lists the various measures proposed to be incorporated into the project to reduce greenhouse gas emissions to an acceptable level. A mitigation measure is recommended to ensure the measures proposed by the developer are incorporated into the project as required by the CCAP to reduce GHG emissions to less than significant. (Draft EIR, at p. 3-106.)

E. Hazards and Hazardous Materials

Impact: Will the Project create a significant hazard to the public or environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. (Draft EIR, at p. 3-118.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p.3-121.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

HM-1-SP If transformers are to be removed, they shall be removed and disposed in accordance with current regulations by the utility company responsible for the transformer.

- HM-2-SP Stained soil areas with PA's 2-5 shall be removed and disposed in accordance with current regulations. Confirmation sampling shall be conducted as required by current regulations after removal to verify that the impacted soil has been adequately removed from the site or treated in-situ (in place) as allowed by the regulations. If during grading activities hydrocarbon (TPH) stained soil areas are discovered, grading within the area shall be temporarily halted and redirected around the area until the appropriate evaluation and follow-up measures are implemented. TPH stained soil shall be removed and transported off-site at a State approved disposal site under the observation of a licensed environmental technician and confirmation samples collected I the sidewalls and bottom of each excavation area. The confirmation samples shall be transported to a state certified laboratory and analyzed for TPH in accordance with EPA Methods 8015M and 8015B, to insure that TPH stained soil has been adequately removed from the site. Based on the laboratory results, the City shall determine when the area of the site is suitable for grading activities to resume.
- HM-3-SP Prior to the issuance of demolition permits of any buildings or structures, or a grading permit, whichever is issued first, for PAs 1, 6A, 6B and 7, a Phase I Environmental Site Assessment (ESA) shall be submitted to the City Building Department. Based on the recommendations of the Phase I ESA, a Phase II ESA or additional hazards investigations may be required. The City Building Department shall, based on the Phase I ESA, determine if additional studies and/or investigations or clean-up/remediation activities are required.
- HM-4-SP Prior to the issuance of demolition permits of any buildings or structures, all fluorescent light ballasts and pole-mounted transformers shall be inspected for PCBs. Any PCB containing fluorescent light ballasts and/or transformers shall be disposed of in accordance with applicable regulatory requirements.
- HM-5-SP Prior to the issuance of demolition permits of any buildings or structures, the project developer shall submit verification to the City Building Department that a lead-based paint survey was conducted and if lead-based paint was found, the lead-based paint was removed and deposited in accordance with all applicable regulatory requirements.
- HM-6-SP Prior to the issuance of demolition permits of any buildings or structures, the project developer shall submit verification to the City Building Department that an asbestos survey was conducted and if asbestos was found, the asbestos was removed and deposited in accordance with all applicable regulatory requirements, including South Coast Air Quality Management District Rule 1403.
- HM-7-SP Prior to the issuance of demolition permits of any buildings or structures or grading permits, whichever is issued first, the project developer shall submit a subsurface methane soil gas report to the City Building Department to screen for the presence of elevated levels of methane gas due to the historic presence

of livestock on PAs 1-7. The recommendations in the subsurface methane soil gas report to remove or remediate any soils with methane gas levels that exceed accepted regulatory levels shall be implemented in accordance with all applicable laws and regulations as determined by the City Building Department.

HM-8-SP Prior to the issuance of a demolition permits of any buildings or structures or grading permits, whichever is issued first within all Planning Areas, the project developer shall provide proof to the City that there are no herbicides or pesticides on the site that exceed Environmental Protection Agency Regional Screening Level (EPA RSL). If on-site pesticides or herbicides exceed EPA RSL, measures in compliance with all applicable local, State and federal regulations to either remediate the pesticides or herbicides on-site, or remove and properly dispose of the pesticides or herbicides shall be completed and proof provided to the City of their safe remediation or removal as permitted by law.

HM-9-SP The project developer shall monitor TCE groundwater investigations and remediation efforts and VOC levels in the area over the next five years. If TCE levels on the site increase above 13 µg/l, precautionary soil gas testing may be warranted in conjunction with proposed residential development activities. If elevated levels of VOCs are identified in shallow soil gas samples at or beyond State standards, onsite residential units may require VOC vapor barrier systems or other measures as determined by the City.

HM-10-SP Prior to the issuance of a demolition or grading permit for Parcel 0218-111-12-0000 within PA 6A, a soil and soil gas assessment in the area of the former UST tank shall be conducted and the results submitted to the City to determine if further investigation or remediation is required to comply with State law in order to safely issue a demolition and grading permits.

HM-11-SP During project demolition and grading, if suspected groundwater and/or soil contamination is encountered, at construction activity within 25 feet shall cease until the area is examined by the construction superintendent and the City to determine its significance and whether or not further clean-up or remediation is required in compliance with State and county laws and regulations.

Explanation: Given the current and historic uses of the site, including extensive dairy and agricultural operations in the past, the potential exists for hazardous materials to be encountered over most of the site. The interiors of some of the existing structures in PAs 2-7 were not accessible during site investigations for hazardous materials. However, it is likely that asbestos materials exist within all buildings that were constructed prior to 1987, which for the project include the milk houses, other dairy and residential structures, concrete stand pipes, concrete irrigation pipes associated with electric-powered water wells, etc. Lead could also exist in structures that were constructed prior to 1978. The compliance by the project developer with all applicable laws and regulations to safely and properly remove any lead-based paint and/or asbestos from buildings and structures to be demolished and removed from the site would ensure that impacts during construction associated with structural or soil contamination from asbestos and lead would be less than significant.

Planning Areas 1, 6A, 6B and 7 were not surveyed for soil pesticides. Therefore, it can't be stated with any certainty that pesticides are not present in the areas that have not been surveyed for soil pesticides, or if present, pesticide concentrations are below U.S. EPA RPGs. Since some of the properties in PAs 1, 6A, 6B and 7 have been used extensively for agriculture, the presence of pesticides and herbicides is highly possible. Pesticide and herbicide residues have a potentially significant impact for those properties that have not been surveyed to date. Mitigation Measure HM-8-SP below will reduce the presence of pesticides and herbicides on the site to less than significant.

The exposure of the project construction personnel and the public to hazardous substances on the site could occur due to the potential soil contamination of PCBs from electrical transformers and light tubes. Pole-mounted transformers occur on the properties that were surveyed in Planning Areas 1-7. However, no leaking from the transformers was observed. Although none were observed for the properties surveyed, it is highly likely there are fluorescent lights in many of the buildings on the site. While no leaking transformers or fluorescent lights were observed during the site investigation, it has not been determined with any certainty whether or not transformers or fluorescent lights have resulted in any on-site soil contamination.

Petroleum hydrocarbons were observed in stained soil and concrete associated with ASTs and the two water wells on several of the surveyed properties in Planning Area's 2-5. Planning Area's 1, 6A, 6B and 7 were not surveyed for ASTs and stained soil and/or concrete could be present on the properties that have not been investigated. The risk does exist for residual soil contamination due to petroleum hydrocarbons.

The potential exists for soil contamination to be encountered during demolition of buildings, grading, utility excavation, and ground disturbance during project construction for the properties that have not been investigated. The potential exists for the exposure of construction personnel or the public to remnant hazardous substances on the site. If exposed to hazardous substances, this could result in a significant hazard to the public.

The environmental concerns on the project site for methane are due primarily from the operation of the former dairy farms. Typical of dairy farms, there is a risk to construction workers and project residents to hazards during construction and throughout the life of the project with the presence of methane gas, which is commonly associated with manure stockpiles.

Based on the preliminary geotechnical investigation, methane gas was detected on the site for those properties that were surveyed. The properties that were not surveyed for methane gas should be surveyed for the presence of methane gas prior to demolition or grading of those properties because of the potential that high concentrations exist of subsurface manure resulting in potential methane generation exist. (Draft EIR, at p. 3-118 to p. 3-121.)

USTs were also located on site and a 500 gallon UST in PA 6A appears to have been removed without oversight, which may require a soil and soil gas assessment to address potential contamination. Groundwater contamination and elevated VOC levels may also

exist on site. (Final EIR, at p. 3.0-22 to p. 3.0-26.) Mitigation Measures HM-1-SP through HM-11-SP will reduce potential hazardous materials impacts to less than significant.

Impact: Will the Project emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. (Draft EIR, at p. 3-121.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-121.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

HM-1-SP If transformers are to be removed, they shall be removed and disposed in accordance with current regulations by the utility company responsible for the transformer.

HM-2-SP Stained soil areas with PA's 2-5 shall be removed and disposed in accordance with current regulations. Confirmation sampling shall be conducted as required by current regulations after removal to verify that the impacted soil has been adequately removed from the site or treated in-situ (in place) as allowed by the regulations. If during grading activities hydrocarbon (TPH) stained soil areas are discovered, grading within the area shall be temporarily halted and redirected around the area until the appropriate evaluation and follow-up measures are implemented. TPH stained soil shall be removed and transported off-site at a State approved disposal site under the observation of a licensed environmental technician and confirmation samples collected I the sidewalls and bottom of each excavation area. The confirmation samples shall be transported to a state certified laboratory and analyzed for TPH in accordance with EPA Methods 8015M and 8015B, to insure that TPH stained soil has been adequately removed from the site. Based on the laboratory results, the City shall determine when the area of the site is suitable for grading activities to resume.

HM-3-SP Prior to the issuance of demolition permits of any buildings or structures, or a grading permit, whichever is issued first, for PA's 1, 6A, 6B and 7, a Phase I Environmental Site Assessment (ESA) shall be submitted to the City Building Department. Based on the recommendations of the Phase I ESA, a Phase II ESA or additional hazards investigations may be required. The City Building Department shall, based on the Phase I ESA, determine if additional studies and/or investigations or clean-up/remediation activities are required.

HM-4-SP Prior to the issuance of demolition permits of any buildings or structures, all fluorescent light ballasts and pole-mounted transformers shall be inspected for PCBs. Any PCB containing fluorescent light ballasts and/or transformers shall be disposed of in accordance with applicable regulatory requirements.

- HM-5-SP Prior to the issuance of demolition permits of any buildings or structures, the project developer shall submit verification to the City Building Department that a lead-based paint survey was conducted and if lead-based paint was found, the lead-based paint was removed and deposited in accordance with all applicable regulatory requirements.
- HM-6-SP Prior to the issuance of demolition permits of any buildings or structures, the project developer shall submit verification to the City Building Department that an asbestos survey was conducted and if asbestos was found, the asbestos was removed and deposited in accordance with all applicable regulatory requirements, including South Coast Air Quality Management District Rule 1403.
- HM-7-SP Prior to the issuance of demolition permits of any buildings or structures or grading permits, whichever is issued first, the project developer shall submit a subsurface methane soil gas report to the City Building Department to screen for the presence of elevated levels of methane gas due to the historic presence of livestock on PA's 1-7. The recommendations in the subsurface methane soil gas report to remove or remediate any soils with methane gas levels that exceed accepted regulatory levels shall be implemented in accordance with all applicable laws and regulations as determined by the City Building Department.
- HM-8-SP Prior to the issuance of a demolition permits of any buildings or structures or grading permits, whichever is issued first within all Planning Areas, the project developer shall provide proof to the City that there are no herbicides or pesticides on the site that exceed Environmental Protection Agency Regional Screening Level (EPA RSL). If on-site pesticides or herbicides exceed EPA RSL, measures in compliance with all applicable local, State and federal regulations to either remediate the pesticides or herbicides on-site, or remove and properly dispose of the pesticides or herbicides shall be completed and proof provided to the City of their safe remediation or removal as permitted by law.
- HM-9-SP The project developer shall monitor TCE groundwater investigations and remediation efforts and VOC levels in the area over the next five years. If TCE levels on the site increase above 13 µg/l, precautionary soil gas testing may be warranted in conjunction with proposed residential development activities. If elevated levels of VOCs are identified in shallow soil gas samples at or beyond State standards, onsite residential units may require VOC vapor barrier systems or other measures as determined by the City.
- HM-10-SP Prior to the issuance of a demolition or grading permit for Parcel 0218-111-12-0000 within PA 6A, a soil and soil gas assessment in the area of the former UST tank shall be conducted and the results submitted to the City to determine if further investigation or remediation is required to comply with State law in order to safely issue a demolition and grading permits.

HM-11-SP During project demolition and grading, if suspected groundwater and/or soil contamination is encountered, at construction activity within 25 feet shall cease until the area is examined by the construction superintendent and the City to determine its significance and whether or not further clean-up or remediation is required in compliance with State and county laws and regulations.

Explanation: An elementary school is proposed for PA 7. If on-site soils contaminated with pesticides, herbicides, asbestos, lead, TPH, UST's, or PCBs are disturbed during grading and construction, potential hazardous emissions could be emitted and impact the school, if in use. The excavation and removal of manure stockpiles on existing and former dairy farms could result in potential hazardous with the releases of methane gas and impact elementary students and faculty. The incorporation of Mitigation Measures HM-1-SP thru HM-11-SP will reduce impacts to less than significant. The long-term operations of the land uses proposed for the Armstrong Ranch Specific Plan would not result in routine handling, use, or disposal of hazardous materials, with the limited exception of standard household cleaning products inside residences, chlorine and filters in swimming pools, and the limited application of pesticides associated with residential landscaping and maintenance practices. Therefore, no significant long-term operational emissions hazard to the proposed school is anticipated. (Draft EIR, at p. 3-121.)

F. Noise

Impact: Will the Project expose persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies. (Draft EIR, at p. 3-165.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-175.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

NOI-1-SP Prior to issuance of grading permits for the residential portion of the project, a detailed acoustical study using final grading plans shall be prepared by a qualified acoustical consultant and submitted to the City. The study shall determine the sound barrier heights and locations required to reduce traffic exterior noise levels to be in compliance with the City's 65 CNEL exterior noise standard for residential uses. All sound barriers shall have a minimum density rating of 2 pounds/square foot.

NOI-2-SP Prior to the issuance of building permits for the residential units, a detailed acoustical study using final building plans shall be prepared by a qualified acoustical consultant and submitted to the City. This study shall describe any acoustical upgrades required to meet the City's 45 CNEL interior noise standard as well as to determine the units that will require windows closed conditions to meet the standard. The City shall require the installation of all acoustical upgrades that are recommended in the detailed acoustical study.

Explanation: The project's proposed residential uses are not considerable sources of noise and would not generate significant noise impacts to the existing adjacent uses or proposed uses within the project site. School activities are exempted from the City's Noise Ordinance, and therefore on-site activities will be less than significant. The Project will generate and increase both existing on- and off-site noise levels due to project traffic and daily on-site activities typically associated with residential use. Project residents along Riverside Drive and Chino Avenue will be exposed to outdoor traffic noise levels greater than the City's 65 CNEL noise standard and require more than 20 dB, and up to 25 dB, of outdoor-to-indoor noise reduction to achieve the City's 45 CNEL interior standard. Homes along Hellman Avenue south of Riverside Drive, and Carpenter Avenue will require closed windows in order to meet the 45 CNEL standard and ventilation requirements of the Uniform Building Code satisfied with windows closed. Mitigation measure NOI-1-SP will reduce traffic exterior noise levels to less than 65 CNEL. Mitigation measure NOI-2-SP will reduce exterior noise levels to meet the City's 45 CNEL interior noise standard. (Draft EIR, at p. 3-169, p. 3-175.)

Impact: Will the Project have a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project. (Draft EIR, at p. 3-171.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p.3-173.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

NOI-3-SP All noise generating construction activities shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays and Sundays.

Explanation: Construction activities have the potential to cause short-term noise impacts at sensitive receptors. Noise produced by construction equipment varies substantially depending upon the type of equipment used and its operation and maintenance. The first phase of construction includes site preparation, grading and soil compaction. This phase of project construction is generally the noisiest and has the shortest duration. The Project will comply with City of Ontario Municipal Code (CCMC) Chapter 29, Noise, providing exterior/interior noise standards and specific noise restrictions, exemptions, variances for point and stationary noise sources, construction activity noise regulations and groundborne vibration limits. In order to reduce impacts associated with the operation of construction equipment, Mitigation Measure NOI-3-SP requires that all construction shall be limited to be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays and Sundays. The compliance by the project with the City's Noise Ordinance and Mitigation Measure NOI-3-SP will would reduce construction impacts to sensitive receptors to less than significant levels. (Draft EIR, at p. 3-173.)

Impact: For a project located within the noise impact zones of the airport land use compatibility plan for ONT and Chino Airports, would the Project expose people residing or working in the project area to excessive noise levels. (Draft EIR, at p. 3-174.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-174.)

Mitigation Measures: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

NOI-4-SP All project real estate transactions shall include aircraft overflight notification disclosures required by the ALUCP and state law (Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353.) and include the following disclosure language: "NOTICE OF AIRPORT IN VICINITY: This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

Explanation: Figure 3.11-7 (Draft EIR, at p. 3-162.) shows the project site is located outside the 60 Community Noise Equivalent Level (CNEL), but within the designated Airport Influence Area of Ontario International Airport. Uses outside the 60 CNEL contour, but within the Airport Influence Area are designated by the Airport Land Use Compatibility Plan (ALUCP) as being in the Real Estate Transaction Disclosure Overflight Notification Zone. State law (Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353) requires airport proximity disclosure information to be provided during real estate transactions in this zone. Potential project residents will have to be properly notified that the site is within the Airport Influence Area of the Ontario International Airport as required by law.

As shown in Figure 3.11-8 (Draft EIR, at p. 3-163.) the project is outside of the 55 CNEL aircraft noise contour of the Chino Airport. Furthermore, the project site is not located within the Airport Influence Area of the airport. The project will not be significantly impacted by aircraft noise from Chino Airport. (Draft EIR, at p. 3-174.)

J. Transportation/Circulation

Impact: Will the Project conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways. (Draft EIR, at p. 3-209.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Final EIR. (Draft EIR, at p. 3-209.)

Mitigation Measure: Implementation of the following required mitigation measures would reduce potentially significant impacts to a less than significant level.

TRAF-1-SP The intersection improvements shown in Table 3.14-15 shall be constructed prior to the issuance of building permits as applicable. The project applicant shall pay its fair share as determined by the City Engineer (see Table 3.14-14) towards the cost to improve area intersections to meet the City's standard of LOS D.

Table 3.14-15
Project Traffic Mitigation Measures

Intersection	Phase -Year Mitigation Required	Mitigation Measure(s)	Preliminary Opinion of Cost	Comments
13. Euclid Ave/Riverside Dr	Phase 3 - 2021	Add 3 rd NB & SB through lanes	\$250,000	Cost shown assumes no R/W acquisition required
16. Vineyard Ave/Riverside Dr	Phase 1 - 2017	Add 2 nd SBLT	\$5,000	Cost assumes re-striping and minor signal modification only
17. Archibald Ave/Riverside Dr	Phase 1 - 2017	Provide dual left-turns on all approaches	\$550,000	Cost shown assumes no R/W acquisition required
19. Haven Ave/Riverside Dr	Phase 1 - 2017	SB: 1-Rt, 1-thru, 2-lts NB: 1-Lt, 1-thru, 1-thru/rt EB: Add 1-thru, 1-lt WB: Add Rt-turn lane	\$800,000	Cost does not include R/W acquisition, if necessary
20. Grove Ave/Chino Ave	Phase 1 - 2017	Install Traffic Signal	\$400,000	-
21. Vineyard Ave/Chino Ave	Phase 1 - 2017	Install Traffic Signal	\$400,000	-
A1. Carpenter Ave/E. Riverside Dr	Phase 2 - 2019	Install Traffic Signal	\$400,000	-
B1. Hellman Ave/E. Riverside Dr	Phase 2 - 2019	Install Traffic Signal	\$400,000	-

TRAF-8-SP Prior to the start of grading, the contractor shall submit a Construction Traffic Management Plan to Public Works for approval. The Plan shall identify truck haul routes, the location of flagmen, hours of operation and other requirements as determined necessary by the City to control project construction traffic into and out of the site and on the adjacent streets to the site for safety purposes.

Explanation: All area intersections and roadway segments will continue to meet the City's LOS D performance criteria with the project. While five (5) study area intersections will not meet City LOS E criteria with future cumulative project and project traffic, the exceedance is not due to the project, but rather area growth. The project will not significantly impact any intersections. However, the project will generate some traffic to area intersections that will be impacted in the future, therefore, a fair share contribution by the project for each of the intersections has been identified and shown in Table 3.14-14. (Draft EIR, at p. 3-217.)

In order to maintain smooth traffic flow during construction activities, the City will require the project developer's contractor to submit a Construction Traffic Management Plan to the City for approved prior the start of any on-site grading. The Construction Traffic Management Plan will identify truck haul routes, flagmen, dedicated turn lanes for construction trucks and equipment into the site, etc. to control project construction traffic into and out of the site and on the adjacent streets to the site for safety purposes and minimize adverse impacts to the local and regional traffic circulation system through project construction. The plan will minimize construction traffic waiting and idling times to reduce fuel consumption and traffic congestion. (Final EIR, at p. 3.0-10.)

SECTION IV

RESOLUTION REGARDING SIGNIFICANT AND UNAVOIDABLE ENVIRONMENTAL IMPACTS

Public Resources Code section 21002 states that "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

Section 15364 of the State CEQA Guidelines defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

The City Council hereby finds that, despite the incorporation of feasible measures outlined in the Final EIR, the following impacts cannot be fully mitigated to a less than significant level. Despite these significant and unavoidable impacts, the City nevertheless approves the Project because of the benefits described in the Statement of Overriding Considerations included herein.

A. Agricultural Resources:

Impact: Will the Project convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use. (Draft EIR, at p. 3-21.)

Finding: Changes or alterations have been required in, or incorporated into, the Project that substantially less, but do not completely avoid, the significant environmental effect associated with implementation of the Specific Plan. (State CEQA Guidelines § 15091 subd. (a)(1).) Beyond the mitigation measure identified below, specific economic legal, social, technological, or other considerations make infeasible mitigation measures or Project alternatives that would completely reduce this impact to a less than significant impact. The loss of agricultural lands on the site is considered significant and unavoidable. (Draft EIR, at p. 3-21.)

Mitigation Measure:

AG-1-SP Deed Disclosure - In order to reduce conflicting issues between sensitive receptors and agricultural uses, all residential units in the Armstrong Ranch Specific Plan shall be provided with a deed disclosure or similar notice approved by the City Attorney regarding the proximity and nature of neighboring agricultural uses. This disclosure shall be applied at the tentative map stage to the affected properties, or otherwise prior to finalizing the sale or rental agreement of any property. The written disclosure shall be supplied to the property purchaser or renter by the vendor or vendor's agent. The content and text of the disclosure shall be approved by the City Attorney, and shall include language to inform new residents that existing agricultural uses may create nuisances such as flies, odors, dust, night-light, and chemical spraying.

Explanation: Per the Draft EIR for The Ontario Plan (TOP), the conversion of agricultural uses was analyzed in the EIR prepared for the New Model Colony General Plan Amendment (NMC EIR). The NMC Final EIR evaluated the potential impacts to prime agricultural land and to agricultural productivity associated with the complete buildout of the NMC per the NMC General Plan on a broad programmatic level. TOP EIR explained that while agriculture has been a predominant industry in the southern portion of Ontario for over half a century, agricultural lands and agricultural production have declined due to increasing population, which has put pressure on cities in southern California to turn Important Farmland into uses that would support residential, economic and employment needs. Within the City of Ontario, dairies and farms have also found that they are being outcompeted by dairies and farms in the Central Valley, so they have either converted their land to more productive, nonagricultural uses or they have left Ontario for the Central Valley. As a result, agricultural resources within the City are fragmented and commercial agriculture is substantially compromised. (Draft EIR, at p. 3-22.)

Implementation of the proposed 199-acre Project would convert existing agricultural land and uses on the site to nonagricultural (urban) uses. This would result in the conversion of 60 acres of Prime Farmland to urban uses. The conversion of approximately 60 acres of Prime Farmland within the Armstrong Ranch Specific Plan to urban use represents a reduction of 1.8 percent of the Important Farmland that exists in Ontario. Although the proportion of the total loss is low, the California Department of Conservation considers any loss of important farmland to be significant. Further, this conversion of farmland to nonagricultural uses is considered significant.

TOP EIR described the City's interest in preserving aspects of the City's agricultural heritage. Private parcels of land that continue in agricultural production help to preserve the traditional rural character of the community, maintain open space, and reduce congestion within the City. One of the ways to attempt to retain existing agricultural land uses in Ontario and the County was the establishment of the Southern California Agricultural Land Foundation Preserves. The San Bernardino County Agricultural Land Preserves within the City were managed by the Southern California Agricultural Land Foundation (SoCALF) until 2006, when the County of San Bernardino took over management of these parcels. The San Bernardino County Agriculture Land Preserve once covered about 15,000 acres, mainly in southern Ontario and Chino. However, much of this area is now being developed by both cities. An amount of \$20 million was paid to the County of San Bernardino from the State of California to establish and fund these lands as long as they remained in agricultural use within the San Bernardino County Agriculture Land Preserve (California Public Resources Code Sections 5905–5907). When the SoCALF Preserves are no longer being used for agricultural purposes, these funds must be returned to the state or used to purchase property of equal size and similar use within the San Bernardino County Agriculture Land Preserve. Approximately 200 acres are designated as SoCALF Preserves in the former New Model Colony (Ontario Ranch), which is the southern portion of Ontario.

While the City maintains a Right-to-Farm ordinance, use of farm equipment and odors associated with dairy farming in the project area is not compatible with the land uses proposed for Armstrong Ranch Specific Plan. Historically, the dairy farms in the southern portion of Ontario represented the highest concentration of dairy cattle in the United States. This type of industrial agriculture has burdened the San Bernardino County region with air quality problems resulting from methane from dry lot operations, water quality problems from high levels of nitrates and other water pollutants percolating into the groundwater basin and surface waters, and hazards from methane and hydrogen sulfide emissions from manure. (Draft EIR at p. 3-22.)

Several mitigation measures to reduce the impacts of the development allowed by the implementation of The Ontario Plan on agriculture were considered in the TOP Draft EIR. The five mitigation measures that were considered and subsequently rejected include:

- Retention of On-Site Agricultural Uses
- Replacement of Agricultural Resources Off-Site
- Relocation of Prime Farmland Topsoil
- Establishment of Conservation Easement or Preserves
- Payment in Lieu or Transfer of Development Rights

None of these mitigation measures would feasibly be able to reduce the significant impacts to levels less than significant and the loss of agricultural land would remain significant and unavoidable.

The development of the Armstrong Ranch Specific Plan, which is consistent with the development allowed by TOP, would occur as part of a wider pattern of development in the project area and as a result, other agricultural land would likely be converted to nonagricultural use as allowed by TOP. The Armstrong Ranch Specific Plan could promote and encourage urban growth by contributing to the encirclement of other agricultural land with urban development. Although development proposals for substantial portions of the project area are pending, and the proposed project intends only to develop property within the Armstrong Ranch Specific Plan Area, development of the Armstrong Ranch Specific Plan could facilitate the conversion of other farmland outside of the Specific Plan. Consequently, implementation of the proposed project could indirectly result in the conversion of farmland to urban (nonagricultural) use that is not located within the project boundary.

As stated above, in January 2001, the City adopted the Agricultural Overlay Zone, or the Right to Farm ordinance, for the area as a “buffering” device between existing agricultural uses and urban development to allow existing agricultural uses to continue through notice in the form of a deed disclosure to future homeowners that agricultural nuisances (odors, noises, etc.) are present and that they have a right to exist as long as the land is not developed otherwise. The deed disclosure ensures that new residents within the Armstrong Ranch Specific Plan Area are made aware of nearby agricultural operations and the potential effects of these operations on the residents by the developer, thereby reducing potential conflicts between existing agricultural use and other non-agricultural uses. The right-to-farm ordinance also protects against the forced sale or conversion of agricultural lands within the greater Armstrong Ranch Specific Plan area.

Despite this policy and mitigation measures, the proposed project would increase economic and other pressures to convert existing agriculture to urban uses, which could indirectly result in the conversion of land outside the Armstrong Ranch Specific Plan, and although City adopted mechanisms (right-to-farm ordinances) exist to substantially reduce potential pressure to convert agricultural land to other uses, and project-specific mitigation measure AG-1-SP would serve to minimize conflicts between agricultural and other uses within the project area, this impact would remain significant and unavoidable. (Draft EIR at p. 3-24.) Further mitigation is deemed infeasible due to economic, social, or other considerations.

Impact: Does the Project involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use. (Draft EIR, at p. 3-24.)

Finding: Specific economic legal, social, technological, or other considerations make infeasible mitigation measures or Project alternatives that would completely reduce this impact to a less than significant impact. The loss of conversion of Farmland on the site is considered significant and unavoidable. (Draft EIR, at p. 3-24.)

Mitigation Measures: No feasible mitigation measures on or off the Project site were identified or put forth that would eliminate this potentially significant impact altogether or reduce it below the level of significance.

Explanation: As discussed above, the conversion of approximately 60 acres of Prime Farmland to urban, or non-farmland use, would have a significant and unavoidable impact. The project site is currently zoned (AG) Specific Plan (AG Preserve). The project site is currently used for a variety of agricultural purposes including field crops, a trucking company and horse farm. There are several dairies on the site that were fully operational in the past, but are presently vacant. The project would convert existing prime farmland and farmland of local importance to non-agricultural use and have a significant impact. The project would not impact any forest land. (Draft EIR, at p. 3-24 to p. 3-25.)

Impact: Does the Project have a cumulative impact to agricultural resources. (Draft EIR, at p. 3-25.)

Finding: Specific economic legal, social, technological, or other considerations make infeasible mitigation measures or Project alternatives that would completely reduce this impact to a less than significant impact. The Project's impact on agricultural resources is considered cumulatively significant and unavoidable. (Draft EIR, at p. 3-25.)

Mitigation Measures: No feasible mitigation measures on or off the Project site were identified or put forth that would eliminate this potentially significant impact altogether or reduce it below the level of significance.

Explanation: Throughout the County of San Bernardino, pending development proposals exist that would result in the conversion of agricultural land, including Prime Farmland and Important Farmlands to nonagricultural land, including the cumulative projects in this EIR. Important farmland in San Bernardino County has declined in the past and all of the prime agricultural land in the southern area of Ontario where most agricultural activity occurs (Ontario Plan) will eventually be developed. Therefore, this trend is likely to continue as development pressure throughout the City increases. This is a significant cumulative impact, and was identified as such in The Ontario Plan Draft EIR. Implementation of the Specific Plan would contribute to this significant cumulative impact. Further, because no feasible mitigation, due to the lack of available contiguous parcels of high-quality agricultural land in the project region, as well as rising land costs and competition for use of land for commercial and residential uses, is available to reduce this impact, cumulative impacts would be significant. The loss of this prime farmland and other agricultural land is considered to be a significant cumulative impact, and the contribution of the proposed project, although small as a percentage, would still constitute a cumulatively considerable contribution. Consequently, the cumulative impact of the proposed project on Prime Farmland and the conversion of agricultural uses would be significant and unavoidable.

B. Air Quality:

Impact: Will the Project result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is in nonattainment under an applicable Federal or

State ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors.) (Draft EIR, at p. 3-49.)

Finding: The project will generate operational emissions that exceed VOX and NOx emission thresholds (Draft EIR at p. 3-47.). Changes or alterations have been required in, or incorporated into, the Project that substantially lessen, but do not completely avoid, the significant environmental effect associated with implementation of the Specific Plan. (State CEQA Guidelines § 15091 subd. (a)(1).) Beyond the mitigation measure identified below, specific economic, legal, social, technological, or other considerations make infeasible mitigation measures or Project alternatives that would completely reduce this impact to a less than significant impact. The Project's cumulative impact to VOC and NOx emissions is considered cumulatively significant and unavoidable. (Draft EIR, at p. 3-49.)

Mitigation Measures: Although the implementation of the following required mitigation measures would reduce air emissions, the cumulative impact would be significant and unavoidable.

AQ-3-SP Electrical outlets shall be provided at both the front and rear of all homes to encourage the use of electrical powered landscape maintenance equipment.

AQ-15-SP For all initial construction activities the project shall:

- Use zero-VOC emission paint;
- Use materials that do not require paint;
- Use spray equipment with 65 percent efficiency or greater.

Explanation: The South Coast Air Basin is in nonattainment for ozone, PM10 and PM2.5. With regard to regional construction emissions, the air quality study determined that SCAQMD regional emission threshold for NOx and PM2.5 would be exceeded by the Project in certain years when the construction of several construction phases would overlap. Therefore, without mitigation, the short-term construction emissions would have a significant regional impact. (Draft EIR, at p. 3-44 to p. 3-45; Final EIR, at p. 3.0-33.)

With regard to project buildout in 2021, operational regional emissions, the Project's emissions of VOC and NOx exceed the SCAQMD's regional thresholds and are considered significant. (Draft EIR, at p. 3-47.)

As the Project's emissions exceed the SCAQMD regional thresholds for NOx and VOC, the emissions could cumulatively contribute to an exceedance of a pollutant for which the basin is in nonattainment (ozone, nitrogen dioxide, PM10), and would not be consistent with the goals of the AQMP.

Project emissions of VOC and NOx may contribute to the background concentration of ozone and cumulatively cause health effects. Impacts may include the following: irritation to respiratory system; reduce lung function; breathing pattern changes; reduction of breathing capacity; inflame and damage cells that line the lungs; make lungs more susceptible to infection; aggravate asthma; aggravate other chronic lung

diseases; cause permanent lung damage; some immunological changes; increased mortality risk; vegetation and property damage. Children who live in high ozone communities and participate in multiple sports have been observed to have a higher asthma risk. This is a significant cumulative health impact associated with ground-level ozone concentrations.

With the implementation of recommended mitigation measures AQ-1-SP and AQ-2-SP, as well as AQ-4-SP through AQ-15-SP, impacts would be less than significant during construction. Impacts related to a cumulatively considerable net increase in criteria pollutants after implementation of Mitigation Measure AQ-3-SP, however, would remain significant and unavoidable. (Draft EIR, at p. 3-51.) No additional feasible mitigation measures have been identified which would further reduce this cumulatively considerable net increase in criteria pollutants and VOC and NO_x emissions would be unavoidable and adverse. (Draft EIR, at p. 3-51.)

Impact: Will the Project expose sensitive receptors to substantial pollutant concentrations (Draft EIR, at p. 3-49.)

Finding: The project will generate operational emissions that exceed VOX and NO_x emission thresholds (Draft EIR at p. 3-47.). Changes or alterations have been required in, or incorporated into, the Project that substantially lessen, but do not completely avoid, the significant environmental effect associated with implementation of the Specific Plan. (State CEQA Guidelines § 15091 subd. (a)(1).) Beyond the mitigation measure identified below, specific economic, legal, social, technological, or other considerations make infeasible mitigation measures or Project alternatives that would completely reduce this impact to a less than significant impact. The Project's impact to sensitive receptors due to VOC and NO_x emissions is considered significant and unavoidable. (Draft EIR, at p. 3-49.)

Mitigation Measures: Although the implementation of the following required mitigation measures would reduce air emissions, the impact to sensitive receptors would be significant and unavoidable.

AQ-3-SP Electrical outlets shall be provided at both the front and rear of all homes to encourage the use of electrical powered landscape maintenance equipment.

AQ-15-SP For all initial construction activities the project shall:

- Use zero-VOC emission paint;
- Use materials that do not require paint;
- Use spray equipment with 65 percent efficiency or greater.

Explanation: As discussed above, project emissions of VOC and NO_x may contribute to the background concentration of ozone and cumulatively cause health effects. Impacts may include the following: irritation to respiratory system; reduce lung function; breathing pattern changes; reduction of breathing capacity; inflame and damage cells that line the lungs; make lungs more susceptible to infection; aggravate asthma; aggravate other

chronic lung diseases; cause permanent lung damage; some immunological changes; increased mortality risk; vegetation and property damage. Children who live in high ozone communities and participate in multiple sports have been observed to have a higher asthma risk. This is a significant health impact associated with ground-level ozone concentrations.

With the implementation of recommended mitigation measures AQ-1-SP and AQ-2-SP, as well as AQ-4-SP, AQ-5-SP and AQ-6-SP, impacts related to NOx would be less than significant during construction. With the implementation of recommended mitigation measures AQ-1-SP and AQ-2-SP as well as AQ-7-SP through AQ-15-SP, impacts related to PM2.5 would be less than significant during construction. Impacts related to a net increase in criteria pollutants after implementation of Mitigation Measure AQ-3-SP, however, would remain significant and unavoidable. (Draft EIR, at p. 3-51.) No additional feasible mitigation measures have been identified which would further reduce this net increase in criteria pollutants and the impact to sensitive receptors due to VOC and NOx emissions would be unavoidable and adverse. (Draft EIR, at p. 3-51, Final EIR, at p. 3.0-33.)

SECTION V

RESOLUTION REGARDING SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES

Section 15126.2(c) of the CEQA Guidelines requires that an EIR discuss “any significant irreversible environmental changes which would be involved in the proposed action should it be implemented.” Generally, a project would result in significant irreversible environmental changes if any of the following would occur:

- The project would involve a large commitment of nonrenewable resources.
- The primary and secondary impacts of the project would generally commit future generations to similar uses.
- The project involves uses in which irreversible damage could result from any potential environmental incidents associated with the project.
- The proposed consumption of resources is not justified (e.g., the project results in wasteful use of energy).

The development of the Armstrong Ranch Specific Plan entails the commitment of energy and human resources. This commitment of energy, personnel, and building materials would be commensurate with that of other residential projects of similar magnitude within the NMC. Manpower would also be committed to the construction of buildings and infrastructure necessary to support the new development.

Ongoing maintenance of the project site would entail a long-term commitment of energy resources in the form of natural gas and electricity. Long-term impacts would also result from an incremental increase in vehicular traffic, and the associated air pollutant and noise emissions. This commitment of energy resources would be a long-term commitment because returning the land to its original condition once developed would be infeasible. However the impacts of increased energy usage would not be considered

significant adverse environmental impacts as discussed in Section 3.11 (Public Services). (Draft EIR, at p. 5-1.)

SECTION VI

RESOLUTION REGARDING GROWTH INDUCING IMPACTS AND COMMITMENT OF RESOURCES

Section 15126.2(d) of the State CEQA Guidelines requires the EIR to address the growth-inducing impact of the Project. EIR Chapter 5 evaluates the potential for the proposed Project to affect economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. (Draft EIR, at p. 5-1.)

There are direct and indirect growth inducing impacts that a project may have. To assess the potential for growth-inducing impacts, the project's characteristics that may encourage and facilitate activities that individually or cumulatively affect the environment must be evaluated.

Direct growth inducing impacts occur when the development of a project imposes new burdens on a community by directly inducing population growth, or by leading to the construction of additional developments in the same area. Also included in this category are projects that remove physical obstacles to population growth, such as a new road into an undeveloped area or a wastewater treatment plant with excess capacity that could allow additional development in the service area. Construction of these types of infrastructure projects cannot be considered isolated from the development they facilitate and serve. Projects that physically remove obstacles to growth or projects that indirectly induce growth are those which may provide a catalyst for future unrelated development in an area such as a new residential community that requires additional commercial uses to support residents.

The proposed Project includes residential dwellings, parks, and a school. In addition to these uses, onsite and offsite infrastructure improvements would be required that are related to stormwater collection and conveyance, domestic and reclaimed water supply, wastewater treatment and transportation-related improvements. These proposed land uses and related infrastructure are part of the overall land use plan envisioned by TOP for the NMC. Therefore, implementation of the Project would not induce growth not already envisioned by the City.

Development of the proposed Project would generate some short-term, construction-related employment opportunities. Though overall phasing of development will occur over several years, individual construction phases of the Project would require a limited labor force due to the relatively short-term nature of construction employment. Given the supply of construction workers in the local work force, it is likely that these workers would come from within the Inland Empire area. Therefore, given the availability of local workers, the proposed Project would not be considered growth inducing from a short-term employment perspective.

The Project would result in an additional 994 residential units in the City or 944 residential units with a 10-acre elementary school. Given an average household size

of 3.7 persons per household, the Project would result in an additional 3,678 persons residing in the City if the school is not constructed. This population growth is consistent with that planned under the NMC General Plan. Further, the Project is consistent with the anticipated growth planned for the City. The population growth envisioned for the Project Site has also been incorporated into SCAG projections. Thus, the Project would induce population growth; however, this growth has been planned for at the local and regional levels. (Draft EIR, at p. 5-2 to p. 5-3.)

In addition to the proposed land uses, onsite and offsite infrastructure improvements would be required that are related to storm water collection and conveyance, domestic and reclaimed water supply, wastewater treatment, and transportation-related improvements. The proposed land uses and related infrastructure are part of the overall land use plan envisioned by TOP for the entire NMC. Therefore, implementation of the Project would not induce growth not already envisioned by the City and already analyzed in the TOP and NMC Final EIR.

Commitment of Resources:

Implementation of the Project will require the long-term commitment of natural resources. Approval and implementation of the Project would result in an irretrievable commitment of non-renewable resources such as energy supplies. The energy resource demands will be used for construction activities, heating and cooling of buildings, transportation of people and goods, as well as lighting and other energy associated needs.

The consumption of nonrenewable resources will consist primarily of fossil fuels, lumber, sand and gravel, photochemical construction materials, steel, copper, lead, and water. The use of alternative energy sources such as solar and wind energy is growing dramatically in response to AB 32 and other state, federal and local requirements and initiatives. It is therefore likely that potentially significant savings in nonrenewable energy supplies will be realized over “business as usual” in the regionally and locally in the future.

A primary effect of the Project would be the commitment of approximately 199-acres of land primarily in agricultural use with approximately 6.5 acres of the 199-acre site used for a trucking company to urban uses. The financial and material investments that would be required of the applicant and the City would result in further commitments of land resources making it likely that the same or similar uses would continue in the future. Implementation of the proposed Project represents a long-term commitment to urbanization. Environmental changes associated with the implementation of the Project result in alterations of the physical environment. If the Project is approved, and subsequently implemented, new structures would be built, additional utilities would be constructed, and circulation improvements would be made.

The commitment of resources and the levels of consumption associated with the proposed Project are consistent with anticipated changes within the City and the region as analyzed in TOP and the NMC Final EIR.

SECTION VII

RESOLUTION REGARDING ALTERNATIVES

The City Council hereby declares that it has considered and rejected as infeasible the alternatives identified in the EIR and described below. Section 15126.6 of the State CEQA Guidelines requires an EIR to describe a range of reasonable alternatives to the Project, or to the location of the Project, which could feasibly achieve most of its basic objectives, but would avoid or substantially lessen any of the significant effects identified in the EIR analysis. An EIR is not required to consider every conceivable alternative to a proposed project. Rather, an EIR must consider a reasonable range of alternatives that are potentially feasible; an EIR is not required to consider alternatives that are infeasible. In addition, an EIR should evaluate the comparative merits of the alternatives. Therefore, this section sets forth the potential alternatives to the Project analyzed in the EIR and evaluates them in light of the objectives of the Project, as required by CEQA.

OBJECTIVES:

One of the primary objectives of the Project is to implement The Ontario Plan (TOP) for the City's New Model Colony (NMC) area. The following additional objectives for the Armstrong Ranch Specific Plan are identified (Draft EIR, at p. 2-16 and p. 2-17):

- To provide neighborhoods that are identifiable from each other, with public and private amenities, linked by a network of pedestrian trails
- To create a community sense of place, walk-ability and livability
- Provide a mix of housing types in response to evolving market demands
- Short blocks that promote ease of access and neighborhood activity
- Use of variable setback, reduced garage emphasis, and "architecture forward"
- Curb separated landscaped parkways
- Establish clearly defined edges and entries that contribute to a district neighborhood identity
- Consider the use of alleyways to add flexibility to frontage designs and assist in the creation of more pedestrian oriented front areas
- Promote development of local street patterns that create and unify neighborhoods, rather than divide them
- Establish a pattern of blocks that promote access and neighborhood activity
- Provide additional housing units to assist the City to satisfy its Regional Housing Needs Assessment (RHNA) fair share number.
- Provide additional housing units to support retail and other commercial uses in the vicinity of the project.

ALTERNATIVES:

Key provisions of the State CEQA Guidelines relating to the alternatives analysis (Section 15126.6 et seq.) are summarized below (Draft EIR, at p. 4-1 to p. 4-2):

- The discussion of alternatives shall focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

- The “No Project” alternative shall be evaluated along with its impact. The “No Project” analysis shall discuss the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved.
- The range of alternatives required in an EIR is governed by a “rule of reason”; therefore, the EIR must evaluate only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project.
- For alternative locations, only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.
- An EIR need not consider an alternative whose effects cannot be reasonably ascertained and whose implementation is remote and speculative.

Rationale for Selecting Potentially Feasible Alternatives

The alternatives must include a no project alternative and a range of reasonable alternatives to the project if those reasonable alternatives would attain most of the project objectives while substantially lessening the potentially significant project impacts. (Draft EIR, at p. 4-1.) The range of alternatives discussed in an EIR is governed by a “rule of reason,” which the State CEQA Guidelines Section 15126.6(f)(3) defines as:

. . . set[ting] forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision-making.

Among the factors that may be taken into account when addressing the feasibility of alternatives (as described in the State CEQA Guidelines Section 15126.6(f)(1)) are environmental impacts, site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the project proponent could reasonably acquire, control, or otherwise have access to an alternative site. An EIR need not consider an alternative whose effects could not be reasonably identified, and whose implementation is remote or speculative.

For purposes of this analysis, the Project alternatives are evaluated to determine the extent to which they attain the basic Project objectives, while significantly lessening any significant effects of the Project.

ALTERNATIVES ANALYSIS:

The goal for evaluating any alternatives is to identify ways to avoid or lessen the significant environmental effects resulting from implementation of the proposed Project, while attaining most of the Project objectives. The City has included the following three alternatives for consideration:

- No Project/Continued Agricultural Use of the Site
- Continued Agricultural Use and Residential Development Consistent with TOP
- Reduced Density

Alternatives Not Selected for Analysis

Alternative Sites: The Armstrong Ranch Specific Plan proposes the development of urban uses, consistent with TOP, including various residential densities, and an elementary school. Development of the proposed Project on another site within the Ontario Ranch would not be feasible for three main reasons. (Draft EIR, at p. 4-2.)

The proposed Armstrong Ranch Specific Plan is consistent with The Ontario Plan. As such, development of the Armstrong Ranch Specific Plan on the project site is necessary to complete the contiguous and unified urban development pattern in the area, and provide the necessary level of housing, schools, and regional recreation facilities envisioned for the site in The Ontario Plan.

Second, the project applicant is in possession of a portion of the project site, the investment in which precludes the purchase of another site of comparable size and physical characteristics on which the proposed uses could be constructed. Given the existing and future development pattern in the project area (and the proposed project's contribution to that pattern) and the project applicant's ownership of the majority of the property, development of the proposed uses on another site was determined to be infeasible.

Third, consideration of an alternative site would not avoid or substantially lessen any of the significant effects of the proposed Project. The proposed project is anticipated to result in significant unavoidable adverse impacts related to:

- Agriculture. The NMC Final EIR identified the conversion of agricultural land within the NMC as a significant and unavoidable impact and adopted a Statement of Overriding Considerations. The project includes agricultural land that would be lost with the development of the project as proposed.
- Air quality. The proposed project would result in a cumulatively considerable net increase of criteria pollutants for which the project region is non-attainment under an applicable federal or state ambient air quality standard.

Given the nature of the proposed project, an alternative location within the South Coast Air Basin would not alleviate the anticipated Project-level or cumulative air quality impacts. Alternatively-located land in the Project vicinity would still be within the NMC and continue to involve agricultural soils and property used or designated for agricultural

purposes, thereby still resulting in an overall loss of farmland. Therefore, analysis of an alternatively-located site is not considered necessary, because it would not avoid, or substantially lessen the significant impacts resulting from the proposed Project. (Draft EIR, at p. 4-2.)

DESCRIPTION OF ALTERNATIVES

Alternative 1 - No Project Alternative/No Development

In accordance with the CEQA Guidelines, the No Project Alternative for a development project on an identifiable property consists of the circumstance under which the Project does not proceed. Section 15126.6(e)(3)(B) of the Guidelines states that, "In certain instances, the no project alternative means 'no build' wherein the existing environmental setting is maintained." Accordingly, this Alternative provides a comparison between the environmental impacts of the proposed project in contrast to the environmental impacts that could result from not approving, or denying, the proposed Project. Because the City Planning Commission and/or City Council has discretionary authority over a proposed project and could choose to deny it, the environmental impacts of that action must be disclosed. As a result of this potential decision, the project site could remain in its current state and condition for an undetermined period of time and not be the subject of any further development proposals. Evaluation of this Alternative will determine if any significant impacts identified with the proposed Project would be eliminated or if any less than significant impacts would be further reduced. (Draft EIR, at p. 4-2 to p. 4-3.)

Alternative 2 – Continued Agricultural Use and Residential Development Consistent with TOP

This alternative reflects a 50 percent reduction of the number of residential units allowed for the project site by TOP to allow the existing agricultural uses on the site to continue on 50 percent of the site. Under this Alternative, all aspects of the proposed project would remain the same including the land uses and distribution on the site, but the overall residential density and number of units would decrease by 50 percent. (Draft EIR, at p. 4-3.)

Alternative 3 – Reduced Density

This alternative is intended to evaluate the potential for reduced environmental impacts associated with an approximate 25 percent reduction in the number of residential dwelling units proposed on the site. The proposed project allows up to 944 residential units on approximately 199 acres, along with an elementary school and 994 residential units without an elementary school. Under this Alternative, the land use distribution on the site would remain, but the overall residential density would be reduced by 25 percent, resulting in the potential development of 695 residential units with an elementary school and 745 residential units without an elementary school. (Draft EIR, at p. 4-3.)

EVALUATION OF ALTERNATIVES

Alternative 1 - No Project Alternative/No Development

The No Project Alternative is considered environmentally superior to the proposed project because, even though it would create impacts related to Land Use and Planning because the site would not be developed as planned by The Ontario Plan, the continuation of the existing uses on the project site would eliminate or lessen the significant agriculture and air quality impacts related to the proposed project. This alternative would eliminate the construction of needed master plan infrastructure improvements that would not only serve the project, but also other projects in the area that would benefit from their construction. The continuation of the existing agricultural uses on site would eliminate or lessen the significant agriculture, air quality, biological, noise, public services and utilities, and traffic and circulation impacts related to the proposed project. (Draft EIR, at p. 4-3 to p. 4-4.)

The City finds that the No Project Alternative is infeasible because it fails to meet any of the Project objectives, and rejects it on that basis.

Alternative 2 – Continued Agricultural Use and Residential Development Consistent with TOP

This alternative would develop half the site consistent with the land use designated for the site by TOP and the other half will continue in the existing agricultural uses. Under this project alternative, approximately 99 acres of the site would be developed with 495 units at the same density of 5 units/acre as allowed by TOP. A 10-acre elementary school may or may not be proposed. If a 10-acre elementary school is proposed, the site could be developed with 445 residential units along with the 10-acre elementary school.

The development of 499 fewer residential units would incrementally reduce air emissions, traffic noise, vehicle trips, the demand for public services, consumption of utilities, generation of students, etc. There would not be any significant and unavoidable adverse impacts that were associated with the proposed project, except the loss of farmland. This project alternative would somewhat reduce farmland impacts because it would eliminate the loss of approximately 80 acres of prime farmland. The proposed project exceeds air quality standards for VOC and NOX. Under this project alternative, a 50 percent reduction in density would reduce these pollutants to less than significant levels and less than emission thresholds. (Draft EIR, at p. 4-4 to p. 4-5.)

The City finds that the Continued Agricultural Use and Residential Development Consistent with TOP Alternative, while meeting all of the Project objectives, would fail to reduce the significant and unavoidable agriculture impacts of the proposed project due to the loss of agricultural land and would contribute to cumulative agricultural impacts. On this basis, the City rejects this Alternative in favor of the Project.

Alternative 3 - Reduced Density Alternative

All of the environmental impacts associated with the proposed Project are lessened with the Reduced Density Alternative. There would be less than significant impacts related to aesthetics, air quality, geology and soils, hydrology/water quality, land use, and public services and utilities. However, the less than significant impacts with

mitigation related to biological resources, cultural resources, greenhouse gas, hazards and hazardous materials, noise, and traffic/transportation would be lessened with this alternative. The significant and unavoidable impacts to agricultural resources would be similar, but less agricultural land lost to development.

The proposed project exceeds air quality standards for VOC and NOX. Under this project alternative, a 25 percent reduction in density would reduce these pollutants to less than significant levels and less than emission thresholds. As the overall development would be incrementally reduced by the lower residential density on-site, traffic-related air pollutant emissions would therefore be incrementally reduced, given the reduction in overall vehicle trips associated with the reduction in residential units. There would also be a reduction in short-term (construction) air quality impacts by this alternative because there would be 249 fewer residential units constructed. This Alternative would result in Project and cumulative air quality impacts that are less than those associated with the Project. (Draft EIR, at p. 4-5 to p. 4-6.)

Alternative 3 would meet the Project objectives as the proposed Project (Draft EIR Table 4-1, p. 4-7). However, a reduction in the total number of units proposed for the site represents a reduction in the overall number of planned residential units as planned by TOP, which embodies land use and policy objectives of the NMC promoting jobs/housing balance within the City.

The City finds that the Reduced Density Alternative is infeasible based on several economic and social factors. A key consideration for the City is the provision of a variety of housing types and the provision of affordable housing. While the Reduced Density Alternative would still provide for attached and detached low-density, medium-density and some high-density dwelling units on the site, it would not provide the range of housing alternatives to the extent that the Project would. Further, the proposed Project would better assist the City in satisfying its Regional Housing Needs Allocation (RHNA) as compared to the Reduced Density Alternative. Also, this Alternative fails to avoid the significant and unavoidable agricultural impacts of the proposed Project. (Draft EIR, at p. 4-5 to p. 4-6.)

Therefore, the City rejects the Reduced Density Alternative in favor of the Project.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Section 15126.6(e)(2) of the CEQA Guidelines indicates that an analysis of alternatives to a proposed project shall identify an environmentally superior alternative among the alternatives evaluated in an EIR. The CEQA Guidelines also state that should it be determined that the No Project Alternative is the environmentally superior alternative, the EIR shall identify another environmentally superior alternative among the remaining alternatives.

Draft EIR Table 4-1 provides a comparison of the alternatives to the Project objectives. A description and evaluation of the potential impacts associated with each alternative is provided in the preceding Findings narrative. Pursuant to Section 15126.6(c) of the CEQA Guidelines, the ability of the alternatives to “avoid or substantially lessen one or more of the significant effects” of the Project is addressed herein.

Of the alternatives analyzed in the EIR, the No Project Alternative is considered the overall environmentally superior alternative as it would reduce several of the impacts occurring under the proposed Project to no impact or levels that are less than significant. However, as shown in Table 4-1, The No Project Alternative would have similar or worse impacts than the proposed project with respect to existing hazards and hazardous materials and water quality associated with the former dairies on the site along with not meeting the objectives established for the proposed Project.

In accordance with the CEQA Guidelines requirement to identify an environmentally superior alternative from the remaining alternatives, a comparative evaluation of the remaining alternatives indicates that the Continued Agricultural Use and Residential Development Consistent with The Ontario Plan is the Environmentally Superior Alternative to the proposed Armstrong Ranch Specific Plan. This alternative results in an incremental reduction of and fewer impacts, including the retention of approximately 80 acres of 180 acres of prime farmland on the site. Although the project alternative would reduce more Project impacts than any of the remaining alternatives, it would not fully meet all of the TOP objectives for the total number of residential units that are designated for the site by TOP. (Draft EIR, at p. 4-7.)

SECTION VIII

RESOLUTION ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code Section 21081(b) and the Guidelines Sections 15093 and 15043, the City has balanced the economic, legal, social, technological, and other benefits of the proposed Project against the following unavoidable adverse impacts associated with the proposed Project and has adopted all feasible mitigation measures with respect to these impacts: (1) Agricultural Resources, and (2) Air Quality. The City also has examined alternatives to the proposed Project, none of which both meets the Project objectives and is environmentally superior to the proposed Project.

The City, after balancing the specific economic, legal, social, technological, and other benefits of the proposed Project, has determined that the unavoidable adverse environmental impacts identified above may be considered “acceptable” due to the following specific considerations which outweigh the unavoidable, adverse environmental impacts of the proposed Project. Each of the separate benefits of the proposed Project, as stated herein, is determined to be, unto itself and independent of the other Project benefits, a basis for overriding all unavoidable adverse environmental impacts identified in these Findings. Each benefit set forth below constitutes an overriding consideration warranting approval of the Project, independent of other benefits, despite each and every unavoidable impact. Project benefits include:

- The Project proposes development that implements the goals and land use designations contained within The Ontario Plan (TOP), as the City’s General Plan. Implementing the General Plan is a legal and social prerogative of the City.

- The Project includes a 10-acre elementary school site that will be made available to the Mountain View School District. The establishment of quality public schools within the City provides numerous benefits to City residents, due to the effect the active civic and social involvement families and students attending such schools have on the affairs of the City and on the overall fabric of society. The City finds that high quality residential communities and schools serving such communities strengthens community and family ties, thereby contributing to the betterment of the long term health and welfare of the City and its residents.
- The Project provides an approximate 199-acre site for the City's Armstrong Ranch. The Armstrong Ranch will include passive recreation facilities for the residents of Ontario, including parks and trails that are within walking and biking distance to residences of the Armstrong Ranch Specific Plan.
- Provisions for pocket parks are included in the Project. Typical improvements for pocket parks include tot lots, picnic and barbecue facilities, multi-purpose trails, and informal turfed play areas. Enhanced landscaped parkways will be provided along major streets serving the community. These enhanced parkways will include pedestrian walkways that connect the Specific Plan area to internal walkways within the community, linking residential neighborhoods to one another, to parks, and the proposed school site. The City finds that creating walkable communities is a social prerogative of the City that is also in conformance with regional mobility goals.
- The park and enhanced parkway system created by the Project will include multiple high quality elements, and the City finds that such high quality amenities and facilities implement the City's General Plan and foster high quality community relations, civic involvement and create a high quality of life for the City's residents.
- The Project fosters a cohesive and distinctively identifiable community that integrates a diversity of residential neighborhoods, an elementary school, and open space, and a diversity of high quality housing to provide a variety of housing opportunities to a broad array of homeowners from diverse social and economic backgrounds. The City finds that the provision of such housing will assist to reduce and improve the housing shortage that continues to exist in southern California.
- The City finds that the provision of a diversity of high quality housing for a range of income levels will attract and stimulate additional job and economic growth in the City.

The City Council hereby declares that the EIR has identified and discussed significant effects that may occur as a result of the Project. With the implementation of the mitigation measures discussed in the EIR, these effects can be mitigated to a level of less than significant except for unavoidable significant impacts as discussed in Section IV of these Findings. The City Council hereby declares that it has made a reasonable and

good faith effort to eliminate or substantially mitigate the potential impacts resulting from the Project. The City Council further finds that except for the Project, all other alternatives set forth in the Final EIR are infeasible because they would prohibit the realization of Project objectives and/or of specific economic, social and other benefits that this City Council finds outweigh any environmental benefits of the alternatives.

For the foregoing reasons, the City Council hereby declares that the benefits provided to the public through approval and implementation of the Specific Plan outweigh any significant adverse environmental impacts of the Project. The City Council finds that each of the Project benefits outweighs the adverse environmental effects identified in the EIR, and therefore finds those impacts to be acceptable. The substantial evidence demonstrating the benefits of the Project are found in these findings, and in the documents found in the record of proceedings, discussed in Section XI below. Therefore, the City adopts this Statement of Overriding Considerations.

SECTION IX

RESOLUTION REGARDING CERTIFICATION OF EIR

The City Council finds that it has reviewed and considered the Final EIR in evaluating the proposed Specific Plan, that the Final EIR is an accurate and objective statement that fully complies with CEQA, State CEQA Guidelines and the City's local CEQA Guidelines and that the Final EIR reflects the independent judgment of the City Council.

The City Council declares that no new significant information as defined by State CEQA Guidelines, section 15088.5 has been received by the City after circulation of the Draft EIR that would require recirculation.

The City Council certifies the Environmental Impact Report based on the entirety of the record of proceedings, including but not limited to the following findings and conclusions:

C. Findings:

The following significant environmental impacts have been identified in the EIR and will require mitigation as set forth in Section IV of this Resolution but cannot be mitigated to a level of insignificance: agriculture (Project-related and cumulative) and air quality (Project-related and cumulative).

D. Conclusions:

1. Except as to those impacts stated above relating to agriculture and air quality, all significant environmental impacts from the implementation of the proposed Project have been identified in the EIR and, with implementation of the mitigation measures identified, will be mitigated to a level of insignificance.

2. Other alternatives to the proposed Specific Plan, which could potentially achieve the basic objectives of the proposed Specific Plan, have been considered and rejected in favor of the proposed Specific Plan.
3. Environmental, economic, social and other considerations and benefits derived from the development of the proposed Specific Plan override and make infeasible any alternatives to the proposed Specific Plan or further mitigation measures beyond those incorporated into the proposed Project.

SECTION X

RESOLUTION ADOPTING A MITIGATION MONITORING AND REPORTING PLAN

Pursuant to Public Resources Code section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Plan attached to this Resolution as Exhibit A. In the event of any inconsistencies between the mitigation measures as set forth herein and the Mitigation Monitoring and Reporting Plan, the Mitigation Monitoring and Reporting Plan shall control.

SECTION XI

RESOLUTION REGARDING CONTENTS AND CUSTODIAN OF RECORD

The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario, 303 East "B" Street, Ontario, California. The custodian for these records is the Planning Director. This information is provided in compliance with Public Resources Code section 21081.6.

The record of proceedings for the City Council's decision on the Project consists of the following documents, at a minimum:

- The NOP and all other public notices issued by the City in conjunction with the Project;
- All comments submitted by agencies or members of the public during the 45-day comment period on the Draft EIR;
- All comments and correspondence submitted to the City with respect to the Project, in addition to timely comments on the Draft EIR;
- The Final Environmental Impact Report for The Armstrong Ranch Specific Plan, including comments received on the Draft EIR, responses to those comments, and technical appendices;
- The Mitigation Monitoring and Reporting Plan for the Project;
- All findings and resolutions adopted by the City Council or Planning Commission in connection with the Armstrong Ranch Specific Plan Project, and all documents cited or referred to therein;

- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the County's action on the Armstrong Ranch Specific Plan;
- All documents submitted to the City (including the Planning Commission and City Council) by other public agencies or members of the public in connection with the Armstrong Ranch Specific Plan, up through the close of the public hearing period;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Armstrong Ranch Specific Plan;
- Any documentary or other evidence submitted to the City at such information sessions, public meetings and public hearings;
- The Ontario Plan (TOP), as the City's General Plan and all environmental documents prepared in connection with the adoption of the General Plan;
- The New Model Colony General Plan and all environmental documents prepared in connection with the adoption of the General Plan (January 7, 1998);
- Matters of common knowledge to the County, including, but not limited to Federal, State, and local laws and regulations;
- Any documents expressly cited or referenced in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

SECTION XII

RESOLUTION REGARDING STAFF DIRECTION

A Notice of Determination shall be filed with the County of San Bernardino within five (5) working days of final Project approval.

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

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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 Resolution No. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

MITIGATION MONITORING AND REPORTING PLAN

[ATTACHED]

**Table 1
Armstrong Ranch Specific Plan Mitigation Monitoring and Reporting Program**

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
Agricultural Resources	The project would result in the conversion of Prime Farmland to non-agricultural uses. The project could impact existing agricultural operations and project residents in the future. This is considered a significant and unavoidable impact.	AG-1-SP Deed Disclosure - In order to reduce conflicting issues between sensitive receptors and agricultural uses, all residential units in the Armstrong Ranch Specific Plan shall be provided with a deed disclosure or similar notice approved by the City Attorney regarding the proximity and nature of neighboring agricultural uses. This disclosure shall be applied at the tentative map stage to the affected properties, or otherwise prior to finalizing the sale or rental agreement of any property. The written disclosure shall be supplied to the property purchaser or renter by the vendor or vendor's agent. The content and text of the disclosure shall be approved by the City Attorney, and shall include language to inform new residents that existing agricultural uses may create nuisances such as flies, odors, dust, night-light, and chemical spraying.	Prior to approval of the each tentative tract map.	City Attorney and developer.			
Air Quality	The project would generate VOC and NOx emissions during the life of the project that exceed SCAQMD thresholds for these emissions. This is considered a significant and unavoidable impact.	<p>AQ-3-SP Electrical outlets shall be provided at both the front and rear of all homes to encourage the use of electrical powered landscape maintenance equipment.</p> <p>AQ-15-SP For all initial construction activities the project shall:</p> <ul style="list-style-type: none"> • Use zero-VOC emission paint; • Use materials that do not require paint; • Use spray equipment with 65 percent efficiency or greater. 	<p>Electrical outlets installed prior to issuance of occupancy permit.</p> <p>The use of zero VOC paints and materials and spray equipment with 65 percent efficiency or greater during construction.</p>	City of Ontario Building Department.			
Air Quality	Concurrent demolition, site preparation and grading will generate PM2.5 emission greater than the threshold.	<p>AQ-2-SP All grading and construction activities shall meet SCAQMD's Rule 403 to address fugitive dust emissions.</p> <p>AQ-7-SP During construction, the construction contractor shall ensure that all haul trucks transporting cut or fill, dirt or debris, off-site will be covered to reduce windblown dust and spills.</p> <p>AQ-8-SP The contractor shall apply non-toxic soil stabilizers according to manufacturers' specifications to all inactive construction areas (previously graded areas inactive for ten days or more).</p> <p>AQ-9-SP The contractor shall apply water three times daily, or non-toxic soil stabilizers according to manufacturers' specifications to all unpaved parking or staging areas or unpaved road surface.</p> <p>AQ-10-SP During construction, traffic speeds on all unpaved roads within the project shall be limited to 15 mph or less.</p>	On-going during grading and construction.	City of Ontario Building Department			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
		AQ-11-SP Prior to the start of any demolition or grading, the project developer’s contractor shall display at the site the phone number of a contact person that will be available 24-hours a day to call with complaints related to PM10 emissions and other construction related concerns.					
Air Quality	The project would generate NOx emissions during construction that exceed SCAQMD threshold.	<p>AQ-1-SP All heavy-duty equipment with engines with a rating of 50 horsepower (hp) or greater shall be compliant with CARB/EPA Tier IV Final emissions standards, if readily available. If Tier IV equipment is not readily available, all heavy-duty equipment with engines with a rating of 50 horsepower or greater compliant with Tier III equipment shall be an acceptable replacement.</p> <p>AQ-4-SP All on-site construction equipment shall meet the following criteria:</p> <ul style="list-style-type: none"> All off road diesel-powered construction equipment 50 horsepower (hp) or greater shall meet the CARB/EPA Tier IV Final emissions standards, if readily available. If Tier IV equipment is not readily available, all heavy-duty equipment with engines with a rating of 50 horsepower or greater compliant with Tier III equipment shall be an acceptable replacement. In addition, all construction equipment shall be outfitted with BACT devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations. A copy of each unit’s certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided at the time of mobilization of each applicable unit of equipment. Encourage construction contractors to apply for SCAQMD “SOON” funds. Incentives could be provided for those construction contractors who apply for SCAQMD “SOON” funds. The “SOON” program provides funds to accelerate clean-up of off-road diesel vehicles, such as heavy-duty construction equipment. More information on this program can be found at the following website: http://www.aqmd.gov/home/programs/business/business-detail?title=offroad-diesel-engines. 	On-going during grading and construction.	City of Ontario Building Department.			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
		<p>AQ-5-SP The project contractor shall use 2010 and newer diesel haul trucks (e.g., material delivery trucks and soil import/export) and if the City determines that 2010 model year or newer diesel trucks cannot be obtained, the City shall require trucks that meet EPA 2007 model year NOx emissions requirements.</p> <p>AQ-6-SP The project contractor shall use electricity from power poles rather than temporary diesel or gasoline power generators, when feasible.</p> <p>AQ-12-SP The project contractor shall be responsible to restrict all project related construction equipment, including on- and off-site construction equipment, to a maximum idling time of five minutes. Any construction equipment idling more than five minutes shall be turned off.</p> <p>AQ-13-SP Temporary grid electricity shall be provided to the site prior to the start of construction.</p> <p>AQ-14-SP Prior to the start of grading, the contractor shall submit a Heavy-Duty Off-Road Vehicle Plan to the Building Department and include the following measures. The city inspector shall ensure the contractor complies with the requirements of the Heavy-Duty Off-Road Vehicle Plan during project grading:</p> <ul style="list-style-type: none"> • All diesel vehicles and construction equipment on-site shall be fueled with ultra-low sulfur diesel or a biodiesel blend approved by the original engine manufacturer with sulfur content of 15 parts per million (ppm) or less. • Electric and/or hybrid construction equipment shall be used in place of diesel and gasoline powered equipment, when available and comparable. • A construction vehicle inventory traffic system that includes the following <ul style="list-style-type: none"> ➢ Contractor and subcontractor name and address, plus contact person responsible for the vehicles or equipment; ➢ Equipment type, equipment manufacturer, equipment serial number, engine manufacturer, engine model year, engine certification (Tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation; ➢ For the emission control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date and hour-meter reading on installation date. 					

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
		<ul style="list-style-type: none"> • The contractor shall submit to the developer a monthly report that for each on-road and off-road construction equipment includes the following information: <ul style="list-style-type: none"> ➢ Hour meter readings on arrival on-site, the first and last day of every month and on-and off-site date. ➢ Any problems with the equipment or emission controls; ➢ Certified copies of fuel deliveries for the time period that identify” <ul style="list-style-type: none"> • Source of supply • Quantity of fuel • Quality of fuel, including sulfur content (percent by weight) • Emissions from all off-road diesel-powered equipment used on the project site do not exceed 40% opacity for more than three minutes in any one hour. In addition, <ul style="list-style-type: none"> ➢ Any equipment found to exceed 40 percent opacity (or Ringlemann 2.0) shall be repaired immediately. ➢ Non-compliant equipment will be documented and a summary provided to the City of Ontario monthly. ➢ A visual survey of all in-operation equipment shall be made at least weekly. ➢ A monthly summary of the visual survey result shall be submitted throughout the duration of the project, except that the monthly summary shall not be required for any 30-day period in which no construction activity occurs. The monthly summary shall include the quantity and type of vehicles surveyed as well as the dates of each survey. 					
Biological Resources	The project has the potential to impact active native bird nests if existing on-site vegetation is removed during the nesting season, which typically extends from January 1 to August 31. Impacts to nesting native birds are prohibited by the Migratory Bird Treaty Act (MBTA) and California Fish and Wildlife Code	BIO-2-SP The removal of any vegetation by the project shall occur outside of the nesting season (January 1 through August 31). If avoidance of the nesting season is not feasible, a qualified biologist shall conduct a nesting bird survey within three days prior to the disturbance of any vegetation, including disking, demolition, grading or construction. If active nests of native bird species are identified, the biologist shall establish suitable buffers around the nests, and the buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. The buffer shall be 300 feet for raptors and 150 feet for songbirds; unless specifically determined to be less by a qualified biologist that is familiar with the nesting phenology of the nesting species.	Removal of on-site vegetation shall occur outside of the nesting season from January 1 through August 31.	City of Ontario Planning Department and Developer.			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
Biological Resources	The project could impact critical habitat, if present.	BIO-5-SP Prior to any demolition or grading within PA’s 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct a critical habitat survey. If any critical habitat is identified, the project developer shall provide suitable critical habitat at a 1:1 ratio or a ratio acceptable to CDFW.	A critical habitat survey conducted prior to the demolition of buildings, site improvements or construction activities in Planning Areas 1, 6A, 6B and 7.	City of Ontario Planning Department and Developer.			
Biological Resources	The project could impact special status species including the burrowing owl, Delhi Sands Flower-loving Fly (DSFF), Loggerhead Shrike, bats, burrowing owl and if present.	<p>BIO-1-SP A preconstruction presence/absence burrowing owl survey shall be conducted within 14 days prior to the start of any demolition, grading or construction of each phase of development (including clearing and grubbing). Each pre-construction survey shall include the land proposed for development within the phase and any associated off-site improvements. If burrowing owls are detected, a mitigation and eviction plan consistent with CDFW protocol for that phase shall be provided to CDFW for approval.</p> <p>BIO-3-SP Prior to the demolition or grading within PA’s 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct a focused survey for burrowing owl following CDFW’s March 2012 recommended guidelines and shall consist of four visits between February 15 and July 15. If the species is found, an eviction plan shall be drafted and submitted to CDFW for approval. Eviction shall only occur when the owls are not nesting. If the species is not found during the focused survey, and the focused survey is completed more than 14 days prior to ground disturbance, a preconstruction presence/absence survey for burrowing owl within 14 days prior to each phase of development (including clearing and grubbing) shall be completed to ensure no mortality to the species occurs (CDFW 2012). If burrowing owls are detected, a mitigation and eviction plan for that phase will be drafted and provided to the CDFW for approval. Eviction shall occur only when the owls are not nesting.</p> <p>BIO-4-SP Prior to the demolition of any buildings, site improvements, grading or construction activities within Planning Areas 1, 6A, 6B and 7, a focused Delhi Sands Flower-loving Fly (DSFF) habitat suitability survey shall be completed. If the results of the focused habitat survey indicate the potential for DSFF to be present and impacted by the project, a protocol survey shall be completed to determine the presence of the DSFF. If DSFF is found to be present, the project developer shall complete the measures required to protect the species on the site, or provide</p>	<p>Burrowing owl survey 14-days prior to demolition, grading or construction, nesting bird survey three days before any vegetation disturbance, a focused Delhi Sands Flower-loving Fly (DSFF) habitat suitability survey completed prior to any demolition, grading or construction in Planning Areas 1, 6A, 6B and 7.</p> <p>A DSFF habitat survey conducted prior to the demolition of buildings, site improvements or construction activities in Planning Areas 1, 6A, 6B and 7.</p> <p>A Loggerhead Shrike and Special Status bat surveys conducted prior to the demolition of buildings in Planning Areas 1, 6A, 6B and 7.</p>	City of Ontario Planning Department and Developer.			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
		<p>off-site mitigation in compliance with established protocols acceptable to USFWS.</p> <p>BIO-6-SP Prior to any demolition or grading within PA’s 1, 6A, 6B or 7 that have not been surveyed to date, a qualified biologist shall conduct Loggerhead Shrike and Special Status bat surveys. If present, the project developer shall complete measures to protect the species in compliance with established protocols and regulations and approved by CDFW.</p>					
Cultural Resources	The project could impact the existing historical resources at 9381 E. Riverside Drive. This impact is considered a potentially significant impact.	CUL-1-SP Prior to the demolition of any buildings on the property at 9381 East Riverside Drive, a professional photographer, under the direction of the project archaeologist/historian, shall take high quality digital and/or film photographs of the exterior of the surviving buildings to document the existing structures and the digital and/or film photographs presented to the City of Ontario for archiving.	Prior to the demolition of any buildings at 9381 East Riverside Drive.	City of Ontario Planning Department.			
Cultural Resources	Earth-disturbing activities associated with implementation of the project could potentially disturb or damage undocumented archaeological resources, if present. This impact is considered potentially significant.	CUL-2-SP An archeologist shall be retained to observe all grading activities and conduct salvage excavation of any archeological resources deemed necessary by the archeologist. The archeologist shall be present at a pre-grading conference, establish procedures for archeological resource surveillance during grading and construction, and establish, in cooperation with the City, procedures to temporarily halt or redirect all work to allow the sampling, identification and evaluation of all resources as deemed necessary by the archeologist. If archeological features are discovered, the archeologist shall report such findings to the Ontario Planning Director. If the archeological resources are found to be significant, the archeologist shall determine the appropriate actions, in cooperation with the City that shall be taken for exploration and/or salvage. In the event that an archaeological resource is unearthed during construction, all construction related activities in the area must cease immediately. The Applicant shall seek the advice of a qualified archaeologist approved by the local tribe to determine if the resource is deemed to be significant. In the event that the archaeological resource has been determined to be significant, the provisions outlined in compliance with CEQA Guidelines Section 15064.5(f) of CEQA shall apply.	Prior to the start of grading and on-going during grading.	City of Ontario Building Department.			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
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Cultural Resources	Earth-disturbing activities associated with implementation of the proposed project could potentially disturb or damage undocumented paleontological resources. This is considered a significant impact.	<p>CUL-3(a)-SP Prior to site preparation or grading activities, construction personnel shall be informed of the potential for encountering paleontological resources. This shall include the provision of written materials to familiarize personnel with the range of resources that might be expected, the type of activities that may result in impacts, and the legal framework of cultural resources protection. All construction personnel shall be instructed to stop work in the vicinity of a potential discovery until a qualified paleontologist assesses the significance of the find and implements appropriate measures to protect or scientifically remove the find. Construction personnel shall also be informed that unauthorized collection of paleontological resources is prohibited.</p> <p>CUL-3(b)-SP Prior to site preparation and grading activities, the applicant shall retain a qualified (member of the American Society of Vertebrate Paleontologists) paleontologist to monitor earth-disturbing activities. No paleontological monitoring is required for excavation up to a depth of five feet. Periodic monitoring by a paleontologist shall be done during excavation from a depth of five feet to ten feet. Full time monitoring by a paleontologist is required for all excavation below 10 feet, or if fossiliferous soils are discovered at shallower depths. A paleontologist shall also be available on-call to assess any potential resources that may be exposed or discovered when the paleontologist is not present.</p> <p>CUL-3(c)-SP For any potential paleontological resource uncovered during construction, a qualified paleontologist shall first determine whether it is a “unique resource”. If the paleontological resource is determined to be a “unique resource,” the paleontologist shall formulate a mitigation plan in consultation with the City that satisfies the requirements off the Conformable Mitigation Guidelines of the Society of Vertebrate Paleontology (News Bulletin Number 163, January 1995).</p> <ul style="list-style-type: none"> • If the paleontologist determines that the paleontological resource is not a unique resource, the paleontologist may record the site and submit the recordation form to the Natural History Museum of San Bernardino County. • The paleontologist shall prepare a report of the results of any study prepared as part of a mitigation plan, following accepted professional practice. Copies of the report shall be submitted to the City of Ontario and to the Natural History Museum of San Bernardino County. 	Prior to the start of grading and on-going during grading.	City of Ontario Building Department.			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
Cultural Resources	Earth-disturbing activities could result in the disturbance of human remains, including those interred outside of formal cemeteries. This impact is considered potentially significant.	CUL-4-SP In the event of the discovery of a burial, human bone, or suspected human bone, all excavation or grading in the vicinity of the find shall halt immediately, the area of the find shall be protected, and the University immediately shall notify the San Bernardino County Coroner of the find and comply with the provisions of P.R.C. Section 5097 with respect to Native American involvement, burial treatment, and re-burial, if necessary.	On-going during grading.	City of Ontario Building Department.			
Greenhouse Gases	The project would generate greenhouse gas emissions that exceed the City of Ontario Community Climate Action Plan emission levels. This impact is considered to be potentially significant.	GHG-1-SP Prior to the issuance of the first building permit, the City shall ensure that all GHG reduction measures shown in Table 3.9-3 are incorporated into the project at the appropriate levels, including tentative tract map approval, issuance of grading permits, issuance of building permits and certificates of occupancy permits. At the City's discretion, alternative reduction measures from Table 1, Appendix B of the City of Ontario Community Climate Action Plan can be substituted for measures in Table 3.7-1, or any future measures approved by the City, with the same or greater point value.	Prior to the issuance of first building permit.	City of Ontario Building Department.			

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
					Signature	Date	Remarks
Hazards and Hazardous Materials	Development of the project could release existing hazardous materials on the site to the environment. This impact is considered potentially significant.	<p>HM-2-SP Stained soil areas with PA's 2-5 shall be removed and disposed in accordance with current regulations. Confirmation sampling shall be conducted as required by current regulations after removal to verify that the impacted soil has been adequately removed from the site or treated in-situ (in place) as allowed by the regulations. If during grading activities hydrocarbon (TPH) stained soil areas are discovered, grading within the area shall be temporarily halted and redirected around the area until the appropriate evaluation and follow-up measures are implemented. TPH stained soil shall be removed and transported off-site at a State approved disposal site under the observation of a licensed environmental technician and confirmation samples collected I the sidewalls and bottom of each excavation area. The confirmation samples shall be transported to a state certified laboratory and analyzed for TPH in accordance with EPA Methods 8015M and 8015B, to insure that TPH stained soil has been adequately removed from the site. Based on the laboratory results, the City shall determine when the area of the site is suitable for grading activities to resume.</p> <p>HM-7-SP Prior to the issuance of demolition permits of any buildings or structures or grading permits, whichever is issued first, the</p>	Prior to the issuance of demolition permits of any buildings or grading permit, whichever is first.	City of Ontario Building Department.			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
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		<p>project developer shall submit a subsurface methane soil gas report to the City Building Department to screen for the presence of elevated levels of methane gas due to the historic presence of livestock on PA's 1-7. The recommendations in the subsurface methane soil gas report to remove or remediate any soils with methane gas levels that exceed accepted regulatory levels shall be implemented in accordance with all applicable laws and regulations as determined by the City Building Department.</p> <p>HM-8-SP Prior to the issuance of a demolition permits of any buildings or structures or grading permits, whichever is issued first within all Planning Areas, the project developer shall provide proof to the City that there are no herbicides or pesticides on the site that exceed Environmental Protection Agency Regional Screening Level (EPA RSL). If on-site pesticides or herbicides exceed EPA RSL, measures in compliance with all applicable local, State and federal regulations to either remediate the pesticides or herbicides on-site, or remove and properly dispose of the pesticides or herbicides shall be completed and proof provided to the City of their safe remediation or removal as permitted by law.</p>					
Hazards and Hazardous Materials	Project implementation within a quarter mile of the proposed on-site elementary school could release hazardous materials in existing buildings and if present in the soil to the school if the school is constructed prior to demolition and soil disturbance. This impact is considered potentially significant.	<p>HM-1-SP If transformers are to be removed, they shall be removed and disposed in accordance with current regulations by the utility company responsible for the transformer.</p> <p>HM-3-SP Prior to the issuance of demolition permits of any buildings or structures, or a grading permit, whichever is issued first, for PA's 1, 6A, 6B and 7, a Phase I Environmental Site Assessment (ESA) shall be submitted to the City Building Department. Based on the recommendations of the Phase I ESA, a Phase II ESA or additional hazards investigations may be required. The City Building Department shall, based on the Phase I ESA, determine if additional studies and/or investigations or clean-up/remediation activities are required.</p> <p>HM-4-SP Prior to the issuance of demolition permits of any buildings or structures, all fluorescent light ballasts and pole-mounted transformers shall be inspected for PCBs. Any PCB containing fluorescent light ballasts and/or transformers shall be disposed of in accordance with applicable regulatory requirements.</p> <p>HM-5-SP Prior to the issuance of demolition permits of any buildings or structures, the project developer shall submit verification to the City Building Department that a lead-based paint survey was conducted and if lead-based paint was found, the lead-based</p>	Prior to the issuance of demolition permits of any buildings.	City of Ontario Building Department			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
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		<p>paint was removed and deposited in accordance with all applicable regulatory requirements.</p> <p>HM-6-SP Prior to the issuance of demolition permits of any buildings or structures, the project developer shall submit verification to the City Building Department that an asbestos survey was conducted and if asbestos was found, the asbestos was removed and deposited in accordance with all applicable regulatory requirements, including South Coast Air Quality Management District Rule 1403.</p>					
Hazards and Hazardous Materials	Development of the project could have TCE and VOC levels above State standards for residential development. This impact is considered potentially significant.	<p>HM-9-SP The project developer shall monitor TCE groundwater investigations and remediation efforts and VOC levels in the area over the next five years. If TCE levels on the site increase above 13 µg/l, precautionary soil gas testing may be warranted in conjunction with proposed residential development activities. If elevated levels of VOCs are identified in shallow soil gas samples at or beyond State standards, onsite residential units may require VOC vapor barrier systems or other measures as determined by the City.</p> <p>HM-10-SP Prior to the issuance of a demolition or grading permit for Parcel 0218-111-12-0000 within PA 6A, a soil and soil gas assessment in the area of the former UST tank shall be conducted and the results submitted to the City to determine if further investigation or remediation is required to comply with State law in order to safely issue a demolition and grading permits.</p>	Prior to the issuance of demolition or grading permit, whichever is first, within PA 6A.	City of Ontario Building Department.			
Hazards and Hazardous Materials	Development of the project could encounter groundwater and/or soil contamination on the site. This impact is considered potentially significant.	HM-11-SP During project demolition and grading, if suspected groundwater and/or soil contamination is encountered, at construction activity within 25 feet shall cease until the area is examined by the construction superintendent and the City to determine its significance and whether or not further clean-up or remediation is required in compliance with State and county laws and regulations.	On-going during demolition and grading.	City of Ontario Building Department			
Noise	The project could expose project residents to exterior noise levels that exceed the City noise standard limit of 65 CNEL and the interior noise level of 45 CNEL associated with future traffic volumes on area roadways. This impact is considered potentially significant.	<p>Project residents along Riverside Drive, and Chino Avenue will be exposed to outdoor traffic noise levels greater than the City's 65 CNEL noise standard. Noise barriers will be required to reduce traffic exterior noise levels to less than 65 CNEL. The following mitigation is recommended to reduce exterior residential traffic noise levels to less than the City's 65 CNEL standard.</p> <p>NOI-1-SP Prior to issuance of grading permits for the residential portion of the project, a detailed acoustical study using final grading plans shall be prepared by a qualified acoustical consultant and</p>	Prior to the issuance of grading permits for residential construction.	City of Ontario Building Department			

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
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		<p>submitted to the City. The study shall determine the sound barrier heights and locations required to reduce traffic exterior noise levels to be in compliance with the City’s 65 CNEL exterior noise standard for residential uses. All sound barriers shall have a minimum density rating of 2 pounds/square foot.</p> <p>Homes within the project along Riverside Drive and Chino Avenue will be exposed to traffic noise levels greater than 65 CNEL and require more than 20 dB, and up to 25 dB, of outdoor-to-indoor noise reduction to achieve the City’s 45 CNEL interior standard. Homes along Hellman Avenue south of Riverside Drive, and Carpenter Avenue will be exposed to noise levels greater than 57 CNEL, but less than 65 CNEL. Homes along these roads will require closed windows in order to meet the 45 CNEL standard and ventilation requirements of the Uniform Building Code satisfied with windows closed. The following measure is recommended to reduce exterior noise levels to meet the City’s 45 CNEL interior noise standard along with the specific units that will require windows closed conditions to meet this standard.</p> <p>NOI-2-SP Prior to the issuance of building permits for the residential units, a detailed acoustical study using final building plans shall be prepared by a qualified acoustical consultant and submitted to the City. This study shall describe any acoustical upgrades required to meet the City’s 45 CNEL interior noise standard as well as to determine the units that will require windows closed conditions to meet the standard. The City shall require the installation of all acoustical upgrades that are recommended in the detailed acoustical study.</p>					
Noise	The project would generate construction noise levels that could impact existing residents closest to the site during project grading. This impact is considered potentially significant.	NOI-3-SP All noise generating construction activities shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays and Sundays.	On-going during project construction.	City of Ontario Building Department			
Noise	The project is outside the 65 CNEL noise contour of the LA/Ontario International Airport. The site is located within the designated Airport Influence Area. Uses outside the 60 CNEL contour, but within the Airport Influence Area are designated by the ALUCP as being in the Real Estate Transaction Disclosure Overflight Notification Zone. State law (Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353)	NOI-4-SP All project real estate transactions shall include aircraft overflight notification disclosures required by the ALUCP and state law (Business and Professions Code Section 11010 and Civil Code Sections 1102.6, 1103.4, and 1353.) and include the following disclosure language: “NOTICE OF AIRPORT IN VICINITY: This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from	Prior to close of escrow for each residential unit.	City of Ontario Planning Department and Developer.			

Mitigation Monitoring Reporting Program

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	requires airport proximity disclosure information to be provided during real estate transactions in this zone. This impact is considered potentially significant.	person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.																										
Transportation/Traffic	While project traffic itself will not impact City of Ontario’s acceptable LOS D standard, the project will contribute traffic to area intersections that in the future will exceed LOS D at some intersections. The project developer will pay its fair share towards the cost of future improvements to the affected intersections. This impact is considered potentially significant.	TRAF-1-SP The intersection improvements shown in Table 3.14-15 shall be constructed prior to the issuance of building permits as applicable. The project applicant shall pay its fair share as determined by the City Engineer towards the cost to improve area intersections to meet the City’s standard of LOS D.	Prior to the issuance of building permits.	City of Ontario Building Department																								
<p>Table 3.14-15 Project Traffic Mitigation Measures</p> <table border="1"> <thead> <tr> <th>Intersection</th> <th>Phase - Year Mitigation Required</th> <th>Mitigation Measure(s)</th> </tr> </thead> <tbody> <tr> <td>Euclid Ave/Riverside Dr</td> <td>Phase 3 - 2021</td> <td>Add 3rd Northbound & Southbound through lanes</td> </tr> <tr> <td>Vineyard Ave/Riverside Dr</td> <td>Phase 1 - 2017</td> <td>Add 2nd Southbound left-turn</td> </tr> <tr> <td>Archibald Ave/Riverside Dr</td> <td>Phase 1 - 2017</td> <td>Provide dual left-turns on all approaches</td> </tr> <tr> <td>Haven Ave/Riverside Dr</td> <td>Phase 1 - 2017</td> <td>Southbound: 1-right-turn, 1-thru, 2-left turns Northbound: 1-Left, 1-thru, 1-thru/right-turn Eastbound: Add 1-thru, 1-left-turn Westbound: Add right-turn lane</td> </tr> <tr> <td>Grove Ave/Chino Ave</td> <td>Phase 1 - 2017</td> <td>Install Traffic Signal</td> </tr> <tr> <td>Vineyard Ave/Chino Ave</td> <td>Phase 1 - 2017</td> <td>Install Traffic Signal</td> </tr> </tbody> </table>								Intersection	Phase - Year Mitigation Required	Mitigation Measure(s)	Euclid Ave/Riverside Dr	Phase 3 - 2021	Add 3 rd Northbound & Southbound through lanes	Vineyard Ave/Riverside Dr	Phase 1 - 2017	Add 2 nd Southbound left-turn	Archibald Ave/Riverside Dr	Phase 1 - 2017	Provide dual left-turns on all approaches	Haven Ave/Riverside Dr	Phase 1 - 2017	Southbound: 1-right-turn, 1-thru, 2-left turns Northbound: 1-Left, 1-thru, 1-thru/right-turn Eastbound: Add 1-thru, 1-left-turn Westbound: Add right-turn lane	Grove Ave/Chino Ave	Phase 1 - 2017	Install Traffic Signal	Vineyard Ave/Chino Ave	Phase 1 - 2017	Install Traffic Signal
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Transportation/Traffic	Traffic congestion impacts could occur during project construction.	TRAF-2-SP Prior to the start of grading, the contractor shall submit a Construction Traffic Management Plan to Public Works for approval. The Plan shall identify truck haul routes, the location of flagmen, hours of operation and other requirements as determined necessary by the City to control	Prior to the start of grading.	City of Ontario Building Department.																								

Mitigation Monitoring Reporting Program

Impact Category	Impact/Issue	Mitigation Measures	Implementation Timing	Responsible Party	Verification of Compliance		
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		project construction traffic into and out of the site and on the adjacent streets to the site for safety purposes.					

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ARMSTRONG RANCH SPECIFIC PLAN (FILE NO. PSP15-002), TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR 189.8 GROSS ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 11.6 GROSS ACRE ELEMENTARY SCHOOL. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, VINEYARD AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45, 0218-111-49 AND 0218-111-50.

WHEREAS, CVRC ONTARIO INVESTMENTS, LLC ("Applicant") has filed an Application for the approval of a Specific Plan, File No. PSP15-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 189.8 acres of land, bounded by Riverside Drive to the north, Chino Avenue to the south, Cucamonga Creek Flood Control Channel to the east, and Vineyard Avenue to the west, within the SP (AG) land use designation, and is presently improved with vacant/agriculture and farm related uses; and

WHEREAS, the properties to the north of the Project site are within the LDR-5 (Low Density Residential), CN (Neighborhood Commercial), MDR-25 (Medium Density Residential) and OS-R Open Space Recreational zoning districts and are developed with Residential, Commercial, School & Park land uses. The property to the east is within the SP (AG) zoning district and is developed with the Cucamonga Creek Flood Control Channel. The property to the south is 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 located and is developed with dairy/agricultural land uses; and

WHEREAS, the Armstrong Ranch Specific Plan establishes a comprehensive set of design guidelines and development regulations to guide and regulate site planning, landscaping, architectural character, and ensure that excellence in community design is achieved during project development. In addition, the Specific Plan will establish the procedures and requirements to approve new development within the project site to ensure TOP goals and policies are achieved; and

WHEREAS, the Armstrong Ranch Specific Plan consists of 189.8 gross acres of land, which includes the potential development of 891 dwelling units and a 11.6-acre elementary school site; and

WHEREAS, the Armstrong Ranch Specific Plan proposes a land use plan that includes mixture of residential uses and is based on traditional neighborhood design principals and concepts that include pedestrian and bicycle connectivity, a traditional grid street network, and a variety of housing types and architectural styles. The Specific Plan is comprised of 7 planning areas and two land use categories Residential (178.2 gross acres) and a 11.6 gross acre future Elementary School; and

WHEREAS, the Armstrong Ranch Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy (General Plan) analysis in Section 9, "*General Plan Consistency*", of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the Policy Plan goals and policies applicable to the Armstrong Ranch Specific Plan; and

WHEREAS, the Specific Plan does not conflict with the Land Use Policies of the General Plan (TOP) and will provide for development, in a manner consistent with the General Plan. The policy (General Plan) analysis in Section 9, "*General Plan Consistency*", of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the TOP Policy Plan goals and policies; and

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

WHEREAS, an Environmental Impact Report (EIR) (SCH#2006111009) has been prepared in accord with the California Environmental Quality (CEQA), the State CEQA Guidelines and the City of Ontario Guidelines to address the environmental effects of the Specific Plan (Armstrong Ranch Specific Plan); and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and approve the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan ("ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 24, 2017, the Planning Commission of the City of Ontario conducted a duly noticed public hearing to consider the Project and concluded said hearing on that date. After considering all public testimony on the application, the Planning Commission voted 6 to 0 to issue its Resolution No. PC17-079 recommending the City Council approval of the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a duly noticed public 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 Environmental Impact Report (EIR) prepared for the project and supporting documentation. Based upon the facts and information contained in the EIR (SCH# 2006111009) and supporting documentation, the City Council finds as follows:

(1) The Armstrong Ranch Specific Plan EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(2) The Armstrong Ranch Specific Plan EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(3) The Armstrong Ranch Specific Plan EIR reflects the independent judgment of the City Council; and

SECTION 2. 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 approving 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 3. ***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 and 2, above, the City Council hereby concludes as follows:

(1) The 189.8-acre Armstrong Ranch Specific Plan is suitable for residential development, uses permitted in the proposed district in terms of access, size, and compatibility with existing land use in the surrounding area; and

(2) The proposed Armstrong Ranch Specific Plan is in conformance with the Land Use Policies and Goals of the Policy Plan and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development. The Armstrong Ranch Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy analysis in *Section 9, "General Plan Consistency,"* of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the Policy Plan goals; and

(3) During the Armstrong Ranch Specific Plan review, opportunities for the involvement of citizens, California Native American Indian tribes (Government Code Section 65352.3.), public agencies, public utility companies, and civic, education, and other community groups, through public hearings or other means were implemented consistent with California Government Code Section 65351; and

(4) The proposed project is consistent with the adopted Housing Element. The Project site is not one of the properties (areas) listed in the Available Land Inventory in the Housing Element.

SECTION 4. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Application.

SECTION 5. ***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 6. ***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 7. 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 8. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 9. 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 ____ day of _____ 2017.

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. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2017 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. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (APN:0218-201-18)

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA15-003, on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, to establish the terms and conditions for the development of Tentative Tract Map 18937 (File No. PMTT17-002).

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 the New Model Colony

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

BACKGROUND: Brookcal Ontario, LLC, ("Brookcal") and the City recognize 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,

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

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

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

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Brookcal is entering into a Development Agreement with the City which provides for the development of up to 48 single family and 217 multi-family residential 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 Brookcal project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 23.66 acres of land within the Low-Medium Density Residential (LMDR) district of Planning Area 7 of The Avenue Specific Plan as shown on Exhibit "A" (The Avenue Specific Plan Land Use Map). The Agreement grants Brookcal a vested right to develop Tentative Tract Map 18937 as long as the Brookcal complies with the terms and conditions of The Avenue 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; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees. Other points addressed by the Agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View Elementary School District and Chaffey Joint Union High School District school facilities requirements.

In considering the application at their meeting of October 24, 2017, 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. PC17-080), 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. 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 (287) and density (9.5 DU/AC) specified within The Avenue Specific Plan. Per the Available Land Inventory, The Avenue Specific Plan is required to provide 2,552 dwelling units with a density range of 2-12 DU/AC.

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. PSPA13-003, an amendment to The Avenue Specific Plan for which an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHBIT "A"
The Avenue Specific Plan Land Use Plan



LEGEND

- | | |
|--|--|
|  LOW DENSITY RESIDENTIAL |  SCHOOL |
|  LOW MEDIUM DENSITY RESIDENTIAL |  PARK |
|  MEDIUM DENSITY RESIDENTIAL |  SCE EASEMENT |
|  RETAIL |  STORM DRAIN EASEMENT |



NOTE: The locations of the parks are conceptual and will be determined as part of the tract map approval process.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-18.

WHEREAS, CALIFORNIA GOVERNMENT CODE SECTION 65864 NOW provides, in pertinent part, as follows:

“The Legislature finds and declares that:

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

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

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

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

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

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms,

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

WHEREAS, on 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 Brookcal Ontario, LLC, for the development of up to 48 single family and 217 multi-family residential units (File No. PMTT17-002/TT18937) on 23.66 acres of land for property generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within the Low Medium Density Residential (LMDR) district of Planning Area 7 of The Avenue Specific Plan 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 November 28, 2006, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC06-041 recommending City Council certification of The Avenue Specific Plan EIR and Issued Resolution PC06-043 recommending approval of The Avenue Specific Plan (File No. PSP05-003); and

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

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

WHEREAS, on February 2, 2010, the City Council of the City of Ontario adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004); and

WHEREAS, on February 2, 2010, the City Council of the City of Ontario adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004); and

WHEREAS, on June 17, 2014, the City Council of the City of Ontario adopted Resolution No. 2014-069 approving an amendment to The Avenue Specific Plan (File No. PSPA13-003) and issued Resolution No. 2014-068 adopting an addendum to The Avenue Specific Plan EIR (SCH# 2005071109); and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with File No. PSPA13-003, an amendment to The Avenue Specific Plan for which an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014, and this Application introduces no new significant environmental impacts; and All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on the October 24, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 6 to 0 to recommend approval (Resolution No. 17-080) of the Development Agreement to the City Council; and

WHEREAS, on November 21, 2017, 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 addendum to The Avenue Specific Plan EIR (SCH# 2005071109) and supporting documentation. Based upon the facts and information contained in the previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Avenue Specific Plan Environmental Impact Report, certified by the City of Ontario City Council on June 17, 2014, in conjunction with File No. PSPA13-003.

(2) The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109), and all mitigation measures previously adopted

with the addendum to The Avenue Specific Plan EIR (SCH# 2005071109), 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 addendum to The Avenue Specific Plan EIR (SCH# 2005071109) is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that will require major revisions to the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) 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 addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was prepared, that will require major revisions to the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) 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 addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the addendum to The Avenue Specific Plan EIR (SCH# 2005071109); or

(b) Significant effects previously examined will be substantially more severe than shown in the addendum to The Avenue Specific Plan EIR (SCH# 2005071109); 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 addendum to The Avenue Specific Plan EIR (SCH# 2005071109) 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 (287) and density (9.5 DU/AC) specified within The Avenue Specific Plan. Per the Available Land Inventory, The Avenue Specific Plan is required to provide 2,552 dwelling units with a density range of 2-12 DU/AC.

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 Planning Commission, 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 November 21, 2017, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 23.66 acres of land located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within the Low Medium Density Residential (LMDR) district of Planning Area 7 of The Avenue Specific Plan, and is presently vacant; and

b. The property to the north of the Project site is within the Low Density Residential district of Planning Area 6A of The Avenue Specific Plan and is vacant. The property to the east is within the Low Density Residential district of Planning Area 8A of The Avenue Specific Plan and is currently developed with agricultural/dairy uses. The property to the south is within the High Density Residential district of Planning Areas 7 and 8 of the Grand Park Specific Plan and is currently developed with agricultural/dairy uses. The property to the west of the project site is within the Low Medium Density Residential, Open Space and Elementary School districts of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses; and

c. The Development Agreement establishes parameters for the development of Tentative Tract Map 19737 within Planning Area 7 of The Avenue Specific Plan for the potential development of 48 single family units and 217 multi-family residential units. The Development Agreement also grants Brookcal Ontario, LLC. the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for The Avenue Specific Plan.

d. The Development Agreement focuses on Tentative Tract Map 19737 that proposes to subdivide the 23.66 acre project into: 1) 48 single-family numbered lots (6-Pack Cluster); 2) 7 multi-family numbered lots for Condominium Purposes (Lots 49 thru 55); and 3) 41 lettered lots for public streets, landscape neighborhood edges and common open space purposes; and

e. The Development Agreement will provide for the development of 48 single family units and 217 multi-family residential units as established for Planning Area 7 of The Avenue 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 were previously reviewed in conjunction with File No. PSPA13-003, an amendment to The Avenue Specific Plan for which an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014. 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 and 4 above, the City Council hereby APPROVES the Development Agreement subject to each and every condition set forth in The Avenue 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 ____ day of _____ 2017.

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. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2017 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. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

Development Agreement

(Document 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

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

BrookCal Ontario L.L.C.

a Delaware limited liability company

_____, **2017**

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA15-003

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, Delaware limited liability company (hereinafter "OWNER"):

RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in The Avenue Specific Plan. 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 Avenue (New Haven) 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 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, 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, OWNER is made aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit “G”). 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 “Construction Agreement” means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and “Construction Agreement Amendment” means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

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

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

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

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

1.1.7 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4 For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government

Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

1.1.10 “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.

1.1.11 “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.

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

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 18937 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.1.14 “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.

1.1.15 "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.

1.1.16 "Model Units" means a maximum of twenty-three (23) model units, including, if constructed, the necessary common private amenities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

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

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

1.1.19 "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.

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

1.1.21 "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.

1.1.22 "Deferred Frontage Improvements" means the improvements on Archibald Avenue and the Property and the SCE Substation and the Improvements on Ontario Ranch Road adjacent to the Property and the SCE Substation including the design and construction of street improvements, neighborhood edge landscaping, sidewalks, trails and all related Improvements"

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "The Avenue Specific Plan."

1.1.23 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the

issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

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

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

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

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Not Used

Exhibit “F” — Infrastructure Improvements Exhibit

Exhibit “G” - Form of Plume 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 is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent, OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

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

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

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

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

2.4 Assignment.

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

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. 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 G) 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. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

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

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

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

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

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

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:

Dave Bartlett
BrookCal Ontario, LLC
3200 Park Center Drive, Suite 1000

Costa Mesa, CA 92626
Email: Dave.Bartlett@Brookfieldrp.com
Phone: 714.200.1533
Fax: 714.200.1833

with a copy to:

John A. Ramirez
Rutan & Tucker, LLP
611 Anton Blvd.
Suite 1400
Costa Mesa, CA 92626
Phone: (714) 662-4610
Fax: (714) 546-9035

(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 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

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

3.4.2 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 twenty-three (23) Model Units including, if constructed, the necessary common private recreation amenities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

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 Infrastructure and Utilities. 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 construction of Storm Drain facilities, at OWNER's sole cost and expense, from the Property to master planned storm drain facilities to serve the Property as

described in Exhibit F. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements, at OWNER's sole cost and expense as described in Exhibit F.

3.7.2.1 Notwithstanding the requirements of Section 3.7.2, OWNER agrees that OWNER shall be responsible for the construction of street improvements, at OWNER's sole cost and expense, on La Avenida from the Eastern Project limits to Turner Avenue as shown on Exhibit F and OWNER's obligation to design and construct Improvements on La Avenida shall include the Water, Recycled Water, Storm Drain and Street Improvements from Archibald Avenue to a point of connection with La Avenida Drive at the boundary of Tract 18922-2. However, CITY and OWNER agree that if all or a portion of OWNER's required street improvements on La Avenida are constructed by others, OWNER shall be responsible for reimbursing such other parties for the fair share portion of OWNER's required street improvements on La Avenida constructed by others. Conversely, if OWNER constructs the street improvements on La Avenida as shown on Exhibit F, that others are also required to construct CITY shall use its best efforts to require such party or parties to reimburse OWNER for the respective fair share portion of the street improvements that OWNER constructed that the other party or parties were required to construct.

3.7.2.2 OWNER agrees that OWNER shall be responsible for the construction of street improvements, at OWNER's sole cost and expense, including neighborhood edge landscaping, sidewalks, trails and all other last lane improvements on Archibald Avenue and Ontario Ranch Road that are adjacent to the Property and adjacent to existing property owned by Southern California Edison ("the Edison Substation") and on Ontario Ranch Road and Archibald Avenue as shown on Exhibit F and described as the "Deferred Frontage Improvements".

3.7.3 OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure as described in Exhibit F consisting generally of the construction of the extension of permanent master planned water and recycled water utility improvements, at OWNER's sole cost and expense, to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the water and recycled water Improvements as described in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

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. OWNER shall deposit, or shall have deposited, with NMC Builders an amount, as determined by the City Engineer to be 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" within thirty (30) days after CITY requests such funds from NMC Builders. If OWNER has not deposited such amount, with NMC Builders within thirty (30) days after CITY requests such funds from NMC Builders, then CITY shall be entitled to withhold issuance of any further permits (whether discretionary or ministerial) 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.

3.8 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 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. 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, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods

which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

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

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

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

4. PUBLIC BENEFITS.

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

4.2 Development Impact Fees.

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

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. 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. Such areas shall either be dedicated to CITY or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first

building permit issued to OWNER. The homeowner's association shall be responsible for the maintenance of all developed common facilities and 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 Ontario Ranch will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for Tract No. 18937 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 Tract No. 18937. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No. 18937.

4.3.1.1 Deferral of Construction of Improvements on Archibald Avenue and Ontario Ranch Road Adjacent to the Property and the SCE Substation on Ontario Ranch Road and Archibald Avenue.

Notwithstanding the above, OWNER has requested and CITY has agreed that OWNER may defer the initiation and completion of the Deferred Frontage Improvements described in Section 3.7.2.2 of this Development Agreement and shown on Exhibit F and described as the street and other improvements on Archibald Avenue directly adjacent to the Project and the SCE Substation and the street and other improvements on Ontario Ranch Road adjacent to the Project and the SCE Substation. CITY's agreement to issue building permits for Production Units prior to OWNER's completion of the improvements described in Section 3.7.2 and as shown on Exhibit F is conditioned upon OWNER's compliance with the following conditions:

a. Prior to, and as a condition precedent to, OWNER requesting and CITY granting of the first building permit for the Property, OWNER shall have completed the designs for the Deferred Frontage Improvements and also shall have completed the real property transaction to acquire the necessary Rights of Way for the Deferred Frontage Improvements, or OWNER shall have made the required deposit to the Escrow Account established by the CITY and OWNER as required by Section 4.3.1.2 below.

b. Prior to, and as a condition precedent to, OWNER requesting and CITY granting of building permits for the fiftieth (50th) residential unit,

including permits for the Model Units, OWNER shall initiate the construction of the Deferred Frontage Improvements.

c. OWNER shall diligently pursue construction of the Deferred Frontage Improvements and shall complete the construction of the Deferred Frontage Improvements and shall have requested CITY acceptance of the Deferred Frontage Improvements prior to, and as a condition precedent to, OWNER requesting a building permit for the one hundred fiftieth (150) residential unit for the Project.

d. OWNER shall provide periodic written progress reports to CITY commencing ninety (90) days after the OWNER initiates construction of the Deferred Frontage Improvements and each ninety (90) days thereafter regarding the progress of the construction of the Deferred Frontage Improvements until such Improvements are accepted by CITY.

e. Subject to the provisions of Section 8 of this Development Agreement, if OWNER does not comply with the conditions of this Section 4.3.1.1, OWNER shall be deemed to be in default of this Development Agreement and CITY shall be entitled to pursue all such remedies as available under the provisions of this Development Agreement.

4.3.1.2 Requirement for OWNER Deposits to an Escrow Account for the Construction of the Deferred Frontage Improvements. If, OWNER has not completed the designs for the Deferred Frontage Improvements and also completed the real property transaction to acquire the necessary Rights of Way for the Deferred Frontage Improvements, prior to, and as a condition precedent to, OWNER requesting and CITY granting of the first building permit for the Property, OWNER shall be required to deposit to the Escrow Account established the CITY and OWNER to fund the design and the construction of the Deferred Frontage Improvements. OWNER's deposits shall be deposited directly into a restricted escrow account (the "Escrow Account"), with an escrow officer mutually agreeable to the parties. Funds placed into the Escrow Account may only be used to make payments to the contractors selected to construct the required Deferred Improvements. Escrow instructions shall be provided by OWNER, in a form approved by the City; provided however, that the escrow instructions shall contain a provision prohibiting the release of any funds without the prior written approval of CITY. OWNER shall deposit the estimated costs for Deferred Frontage Improvements as determined by the City Engineer, which shall include the estimated costs of all OWNER's "last lane" improvements and all other construction activities related to the completion of the Deferred Frontage Improvements, whether or not the costs of such Improvements are considered to be DIF Credit eligible Improvements. In the event that, during the progress of the construction, additional funds become necessary for completion of the Deferred Frontage Improvements or activities (i.e., because of change orders, extra work claims, etc.), CITY

shall notify OWNER of the need for additional funds. Within ten (10) calendar days following such notice, OWNER shall deposit into the Escrow Account an amount determined by the CITY to be necessary to cover such overage(s). If OWNER fails to make the required deposit, or fails to make subsequent deposits to cover any overages, or fails to initiate and make reasonable progress or complete construction of the Deferred Frontage Improvements as required herein, OWNER shall be considered to be in default of this Development Agreement. If OWNER defaults, any and all remaining funds in the Escrow Account shall be utilized by CITY to complete the construction of the Deferred Frontage Improvements. Upon the completion of construction of the Deferred Frontage, any remaining funds and accrued interest, if any, in the Escrow Account shall be returned to OWNER.

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

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent, OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit 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. 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, OWNER 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 and 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 and 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 and Forty-Three Cents (\$2.43) and the Two Dollars and 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 applicable specific plan, whichever is greater, and the Maximum Development

Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

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

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

4.5 Written Evidence of Compliance with Schools Obligations. OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch 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 Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER’s Project. In the

event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 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 and Seven Dollars (\$1,907.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential dwelling unit. The First Installment shall be based upon the "Maximum Development Density" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the effective date of this Development Agreement.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) 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, 2018. 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-Seven Cents (\$.57) 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, 2018. 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 LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment require that the City shall not approve a final parcel map or tract map for the area of development within the Ontario Ranch served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, CITY's approval of the final Tract Map for Tract No.18937. The amount of Net MDD Water Availability Equivalents required 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.

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

4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.7 of this Agreement.

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

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

4.9 Maintenance of Common Areas and Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association 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 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). 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 and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property 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 4.5 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 non-damage 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 6.2 and 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**

**BROOKCAL ONTARIO LLC
"OWNER"**

BrookCal Ontario LLC, a California limited liability company

By: _____

Name:

Title: Authorized Representative

Date: _____

"CITY"

CITY OF ONTARIO

By: _____

Scott Ochoa
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

A notary public or other officer completing this certificate certifies 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

County of San Bernardino

On _____ before me, _____, Notary Public, personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

LEGAL DESCRIPTION

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

THE WEST 30 ACRES OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

AREAS AND DISTANCES ARE COMPUTED TO THE CENTER OF ADJOINING STREETS.

EXCEPT THE SOUTH 30 FEET THEREOF AS RESERVED FOR ROAD PURPOSES.

ALSO EXCEPT THE WESTERLY 280 FEET OF THE SOUTHERLY 316 FEET THEREOF.

ALSO EXCEPT THE WEST 52.00 FEET OF THE SOUTH 500.00 FEET OF THE WEST 30.00 ACRES OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

SAVING AND EXCEPTING THEREFROM THE SOUTHERLY 316 FEET THEREOF.

FURTHER EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND CONVEYED TO THE CITY OF ONTARIO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, BY GRANT DEED RECORDED SEPTEMBER 8, 2014 AS INSTRUMENT NO. [2014-0329810](#), OFFICIAL RECORDS.

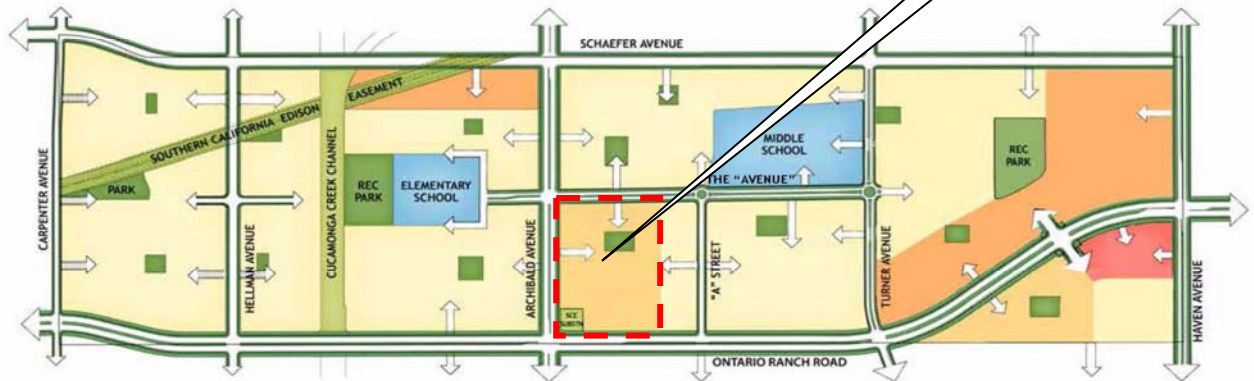
APN: 0218-201-18-0-000

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Map showing Property and its location

**Project Site
TT18937**

Exhibit 8



LEGEND

- | | |
|--------------------------------|----------------------|
| LOW DENSITY RESIDENTIAL | SCHOOL |
| LOW MEDIUM DENSITY RESIDENTIAL | PARK |
| MEDIUM DENSITY RESIDENTIAL | SCE EASEMENT |
| RETAIL | STORM DRAIN EASEMENT |



NOTE: The locations of the parks are conceptual and will be determined as part of the tract map approval process.

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On November 28, 2006, the Planning Commission:

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

On December 9, 2006, the City Council:

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

On January 16, 2007, the City Council:

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

On February 2, 2010, the City Council:

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

On May 27, 2014, the Planning Commission:

- a) Issued Resolution No. PC14-042 recommending City Council approval of an addendum to The Avenue Specific Plan Environmental Impact Report (SCH #2005071109).
- b) Issued Resolution No. PC14-043 recommending City Council approval of an Amendment to The Avenue Specific Plan (File No. PSPA13-003).

On June 14, 2014, the City Council:

- a) Adopted Resolution No. 2017-068 approving an addendum to The Avenue Specific Plan Environmental Impact Report (SCH #2005071109).
- b) Adopted Resolution No. 2017-069 approving an Amendment to The Avenue Specific Plan (File No. PSPA13-003).

On October 24, 2014, the Planning Commission:

- a) Adopted Resolution No. PC17-081 recommending City Council approval of the Brookcal Ontario, LLC, Development Agreement File No. PDA15-003.
- b) Adopted Resolution No. PC17-080 approving Tentative Tract Map 18987

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

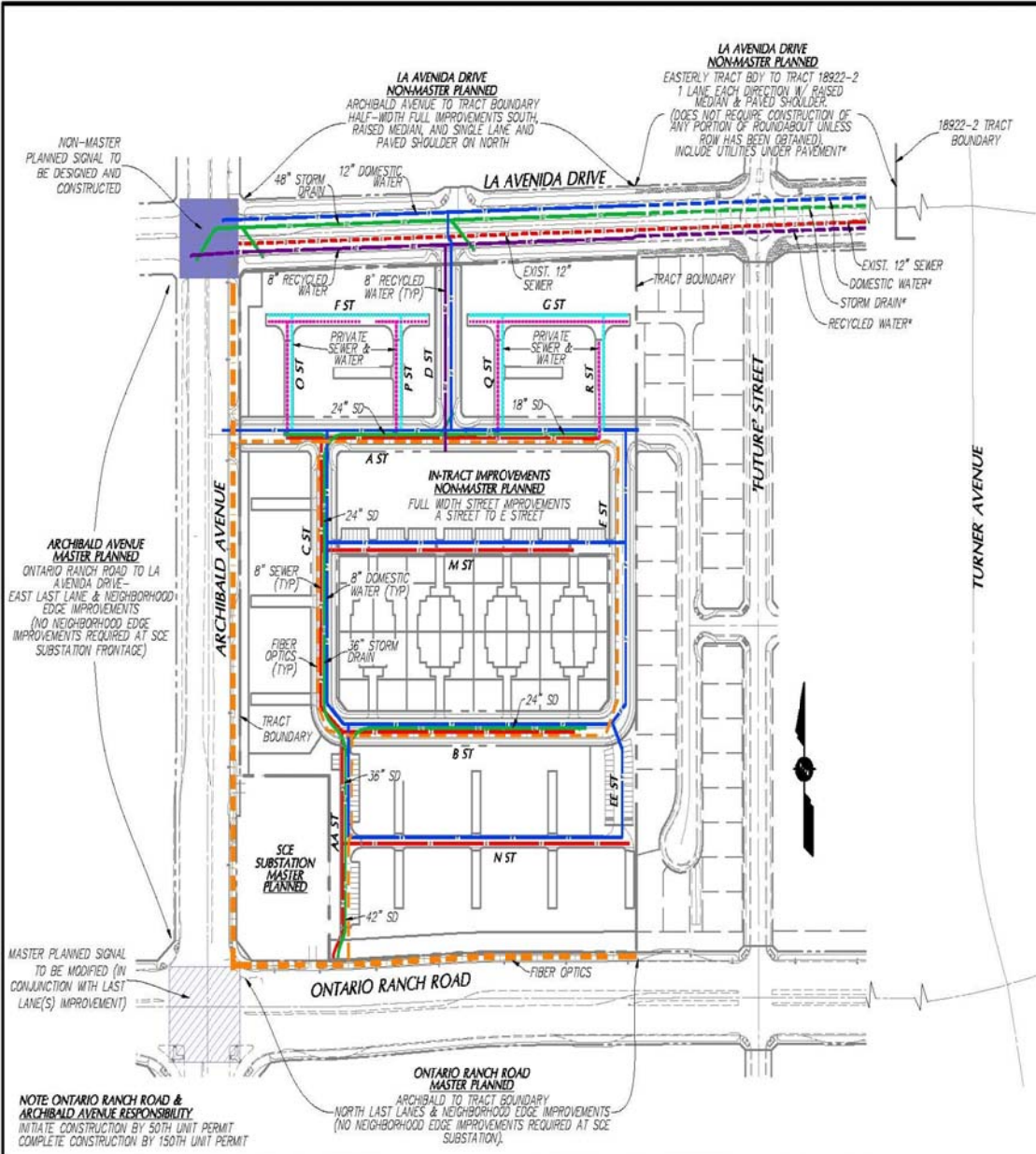
1. The Avenue Specific Plan Environmental Impact Report, Resolution No. 2006-131.
2. The Avenue Specific Plan (File No. PSP12-001, Ordinance No. 2851).
3. The Avenue Specific Plan Amendment Supplemental Environmental Impact Report (File No. PSPA07-004, Resolution No. 2010-010).
4. The Avenue Specific Plan Amendment (File No. PSPA07-004, Resolution No. 2010-011).
5. The Avenue Specific Plan addendum to the Environmental Impact Report (File No. PSPA13-003, Resolution No. 2017-068).
6. The Avenue Specific Plan Amendment (File No. PSPA13-003, Resolution No. 2017-069).
7. 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 F

**NEW HAVEN
DEVELOPER AGREEMENT**
MASTER & NON-MASTER
PLANNED INFRASTRUCTURE
FOR
TENTATIVE TRACT MAP NO. 18937
CITY OF ONTARIO, IN THE COUNTY
OF SAN BERNARDINO, STATE OF
CALIFORNIA

Required Infrastructure Improvements

Exhibit "F"



<p>PREPARED FOR:</p> <p>Brookfield Residential</p> <p>3200 PARK CENTER DRIVE, SUITE 1000 COSTA MESA, CA 92626 (714) 427-8868</p>	<p>PREPARED BY:</p> <p>K&A ENGINEERING LAND PLANNING SURVEYING</p> <p>357 N. SHERIDAN STREET SUITE 117 CORONA, CALIFORNIA 92680 TEL. (951) 279-1800</p>
---	--

Exhibit "G"

FORM OF PLUME DISCLOSURE LETTER



ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

March 2017

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

DISCLOSURE NOTICE SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/TPM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE (APN: 0218-241-31)


RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA17-001), on file with the Records Management Department, between the City of Ontario and Loyola Properties 1, LP, to establish the terms and conditions for the development of Tentative Parcel Map 19787 (File No. PMTT16-021).

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 the New Model Colony

FISCAL IMPACT: The proposed Development Agreement will provide funding from a community facilities district (CFD) for additional City services required to support the Grand Park Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees.

BACKGROUND: Loyola Properties 1, LP, ("Loyola") and the City recognize 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, Loyola is entering into a Development Agreement with the City providing for the development of up to

STAFF MEMBER PRESENTING: Scott Murphy, Assistant Development Director

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

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

14

587 residential 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 Loyola project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 76.88 acres of land that is within Tentative Parcel Map 19787, located within the High Density Residential (HDR) zoning district of Planning Areas 7 and 8 of the Grand Park Specific Plan as shown on Exhibit A (The Grand Park Specific Plan Land Use Map). The Development Agreement grants Loyola a vested right to develop Tentative Parcel Map 19787 as long as Loyola complies with the terms and conditions of the Grand Park 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 include: Development Impact Fees (DIF) for construction of public improvements (i.e., streets and bridges, police, fire, open space/parks etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees. Other points addressed by the agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View Elementary School District and Chaffey High School District school facilities requirements.

In considering the application at their meeting of October 24, 2017, 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 5 to 0 vote (Resolution No. PC17-083), recommended approval of the Development Agreement to the City Council.

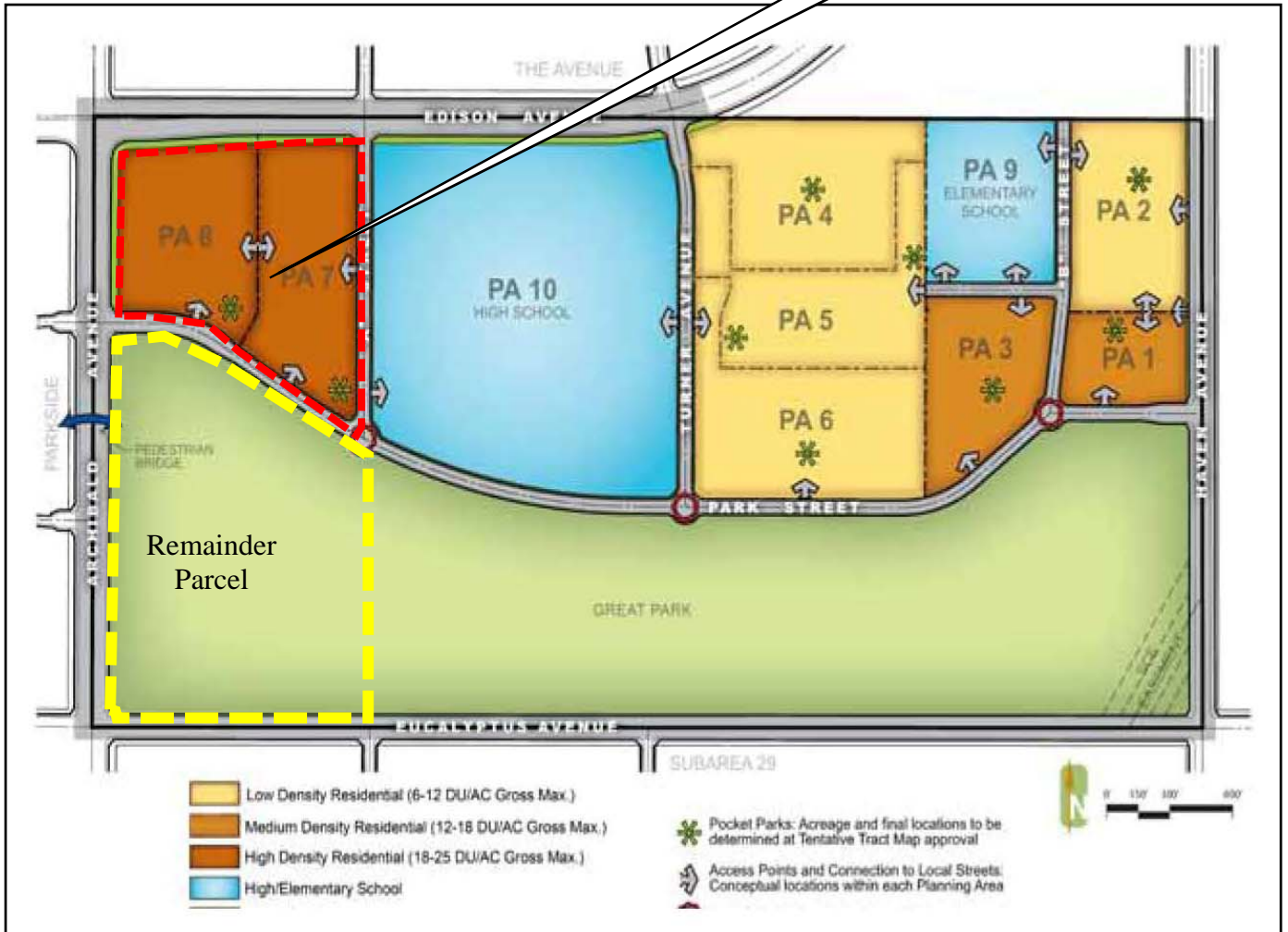
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element 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 the Grand Park Specific Plan, for which an Environmental Impact Report (SCH# 2012061057) was certified by the City Council on January 21, 2014. This application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference.

EXHBIT "A"
The Grand Park Specific Plan Land Use Plan

Project Site



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT FILE NO. PDA17-001, BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/PM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-241-31.

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 Loyola Properties 1, LP, and the City of Ontario, File No. PDA17-001, concerning those 76.68 acres of land within High Density Residential (HDR) district of Planning Areas 7 and 8 of the Grand Park Specific Plan, located at the southeast corner of Ontario Ranch Road and Archibald 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 December 16, 2013, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC13-082 recommending City Council certification of the Grand Park Specific EIR and Issued Resolution PC13-83 recommending approval of the Grand Park Specific Plan (File No. PSP12-001); and

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

WHEREAS, on February 4, 2014, the City Council of the City of Ontario adopted Ordinance No. 2985 approving the Grand Park Specific Plan; and

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

WHEREAS, on October 24, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 5 to 0 to recommend approval (Resolution No. 17-083) of the Development Agreement to the City Council; and

WHEREAS, on November 21, 2017, 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 previously adopted Grand Plan Specific Plan Environmental Impact Report (SCH# 2012061057) and supporting documentation. Based upon the facts and information contained in Grand Plan Specific Plan Environmental Impact Report (EIR) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014. This application introduces no new significant environmental impacts; and

(2) The previous Grand Plan Specific Plan EIR (SCH# 2012061057) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Grand Plan Specific Plan EIR (SCH# 2012061057) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Grand Plan Specific Plan EIR (SCH# 2012061057) reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014, and all mitigation measures previously adopted with the EIR, 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 EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the EIR that will require major revisions to the 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 EIR was prepared, that will require major revisions to the 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 Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014; or

(b) Significant effects previously examined will be substantially more severe than shown in the addendum; 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 Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014, 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 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 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 Planning Commission, 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 November 21, 2017, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 76.68 acres of land generally located along the southeast corner of Ontario Ranch Road and Archibald Avenue, within the High Density Residential (HDR) district of Planning Areas 7 and 8 of the Grand Park Specific Plan, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north is located within Planning Area 7 (Low Density Residential) of the Avenue Specific Plan and developed with SCE Substation and vacant land. The property to the south is within Planning Area 3 (Conventional Medium Lot) of the Subarea 29 Specific Plan and is currently vacant. The property to the east is within Planning Area 10 (Future High School) of the Grand Park Specific Plan and is vacant. The property to the west is within the Planning Area 21 of the Parkside Specific Plan (Commercial) and is currently vacant; and

c. The Development Agreement establishes parameters for the development of Tentative Parcel Map 19787 within Planning Areas 7 and 8 of the Grand Park Specific Plan for the potential development of 587 residential units. The Development Agreement also grants Loyola Properties 1, LP, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Grand Park Specific Plan.

d. The Development Agreement focuses on Tentative Parcel Map 19787 that proposes to subdivide 76.68 acres of land into 4 parcels and 2 letter lots for public road purposes and a remainder parcel for the future portion of the Great Park, within the High Density Residential (HDR) district of Planning Areas 7 and 8 of the Grand Park Specific Plan. The subdivision will allow the orderly build-out of the backbone infrastructure and the future "B" Maps for the subdivision of residential neighborhoods and internal circulation. The parcels range from 6.03 gross acres to 8.41 gross acres; and

e. The Development Agreement will provide for the development for the potential development of 587 residential units as established for Planning Areas 7 and 8 of the Grand Park Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014. 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 and 4 above, the City Council hereby APPROVES the Development Agreement subject to each and every condition set forth in the Grand Park 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 ____ day of _____ 2017.

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. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2017 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. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

Development Agreement

(Document 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

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

And the

**Ronald and Kristine Pietersma Family Trust
and
Loyola Properties I L.P.**

_____, 2017

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA17-001

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. a California limited partnership (hereinafter referenced jointly as "OWNER"):

RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Grand Park Specific Plan Environmental Impact Report and all addendums (the "EIR"). The City Council found and determined that the EIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the EIR, which included consideration of this Agreement; and

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

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

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

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

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

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

WHEREAS, the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. jointly referenced as "OWNER" represent that they are the owners of the fee simple title to the Property; 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 and such Agreement requires that the City reserve exclusively for Members of NMC Builders; and,

WHEREAS, Certificates of Net Water Availability made available through the construction of the Phase 1 water system Improvements are provided to NMC Builders LLC 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 acknowledge that OWNER shall be required to become a Member of NMC Builders and OWNER Property is a Phase 2 Property under the provisions of the Amendment to the Construction Agreement between the City and NMC Builders 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, OWNERS' Property is defined in the Amendment to the Construction Agreement between the CITY and NMC Builders as a "Phase 2 Water Property" 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 aware of the South Archibald Trichloroethylene (TCE) Plume Disclosure Letter (Exhibit "I"). 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 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

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

reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

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

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

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

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

authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

1.1.10 “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.

1.1.11 “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.

1.1.12 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 19787 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.1.13 “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.

1.1.14 "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.

1.1.15 "General Plan" means the General Plan adopted on January 27, 2010.

1.1.16 "Model Units" means a maximum of twenty-five (25) residential units constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.17 "Non-Residential Units" means the non-residential buildings constructed by OWNER on the Property.

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

1.1.19 "Phase 2 Water EDUs" means the number of equivalent dwelling units or non-residential square footage assigned to OWNER 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.

11.20 "Phase 2 Water Improvements" means the future water infrastructure Improvements required for the issuance by CITY of the "Water Availability Equivalents" (WAE) for the Project.

1.1.21 "Phase 2 Water Participation Fee" means the fee paid to CITY upon CITY to fund the Property's respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by CITY.

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

1.1.23 "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.

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

1.1.25 "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.

1.1.26 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Grand Park Specific Plan.”

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

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

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

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

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Conceptual Phasing Plan

Exhibit “F” — Infrastructure Improvements Exhibit for Parcel Map No. 19787

Exhibit “F-1-” Phasing Plan of Improvements Exhibit for Parcel Map No. 19787

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 is the owner of the fee simple title to the Property.

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

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

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least forty percent (40%) of the actual number of residential units permitted under this Agreement; and in mixed use areas of projects, the OWNER shall have obtained, as applicable, building permits for at least forty (40%) percent of the non-residential floor area permitted under this Agreement and at least forty (40%) percent of the actual number of residential units permitted under this Agreement; and

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

2.4 Assignment.

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

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. 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. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

- (a) Expiration of the stated term of this Agreement as set forth in Section 2.3.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

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

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 OWNERS:

Pietersma Family Trust and Loyola Properties 1 L.P.
C/O RCCD Inc.
Attn: Jason Lee, Applicant
8101 E. Kaiser Blvd.
Suite 140
Anaheim Hills, CA 92808

- (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 portions 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, or portions of the Property, in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Conceptual Phasing Plan. Development of the Property is contingent in part on the phasing of infrastructure improvements over which the OWNER has control. Attached hereto as Exhibit "E" is a conceptual phasing plan which is based on the OWNER's best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER's business judgment as set forth in Section 3.3 above. OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19787 may be developed prior to, concurrent with, or after the development of any of the other Parcels in Parcel Map 19787, subject to completion of the infrastructure improvements required for the respective Parcel Map as described in Section 3.7, and in Exhibit F and as determined by the City Engineer.

3.4.1 Attached hereto as Exhibit "F" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19787 ("the Infrastructure Improvement Exhibits").

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from

time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

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

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

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

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

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

3.7 Public Infrastructure and Utilities. 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 of any portion of the Property covered by Parcel Map No. 19787, OWNER shall connect the portion of the Project covered by Parcel Map No. 19787 to all utilities necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19787.

As a further condition of development approval for the Project, 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 portion of the Project within the boundaries of Parcel Map No. 19787 shall require the construction of, at OWNER's sole cost and expense, Storm Drain facilities along Eucalyptus Avenue from the eastern Project limits to the existing facilities in Archibald Avenue, and as further described in the attached Exhibit F.
- 3.7.2 OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19787 shall require the construction, at OWNER's sole cost and expense, of street improvements on Ontario Ranch Road, "A" Street, Grand Park Street, Archibald Avenue and Eucalyptus Avenue. Such street improvements shall include two signalized intersections; one on Ontario Ranch Road and "A" Street and one at the intersection of Grand Park Street and Archibald Avenue. Such improvements shall also include modifications to the traffic signal at Eucalyptus Avenue and Archibald Avenue. All such street improvements shall also be as further described in the attached Exhibit F.
- 3.7.3. OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure, at OWNER's sole cost and expense, as described in Exhibit F 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 Non-Residential Buildings or Production Units within the boundaries of Tract 19787 prior to completion of the water and recycled water Improvements as described in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.
- 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" within 30 days after CITY requests such funds from NMC Builders. If OWNER has not deposited such amount, with NMC Builders within 30 days after CITY requests such funds from NMC Builders then CITY shall be entitled to withhold issuance of any further permits for the Project (whether discretionary or ministerial) 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 extension of permanent master planned sewer infrastructure, at OWNER's sole cost and expense as described in the attached Exhibit F consisting generally of the construction of the extension of sewer infrastructure in to serve the Property and as further described in the attached Exhibits F.
- 3.7.6 OWNER agrees that development of the portion of the Property within the boundaries of Parcel Map 19787 shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit F, consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the portion of the Property within the boundaries of Parcel Map 19787.
- 3.7.7 CITY agrees that OWNER may separate the construction of the Improvements described in Section 3.7.1 through Section 3.7.6 above into two (2) phases of construction as shown in the attached Exhibit "F-1" "Phasing Plan of Improvements" attached hereto and incorporated herein. Notwithstanding the above, OWNER agrees that the portion of the improvements to the areas described on the attached Exhibit "F-1" as the phase 1 improvements shall be completed prior to OWNER requesting and CITY issuance of the first building permit for any Production Unit for the Property. CITY's agreement to issue building permits for Production Units prior to OWNER's completion of the improvements shown as the phase 2 improvements on Exhibit "F-1" is conditioned upon OWNER's compliance with the following conditions:
- a. Prior to, and as a condition precedent to, OWNER requesting and CITY's granting of building permits for the two hundred fiftieth (250th) Production Unit, including permits for the Model Units, OWNER shall initiate the construction of the improvements shown on Exhibit F-1 as the phase 2 improvements, including improvements to, in or adjacent to, Eucalyptus Avenue and Grand Park Street, as shown in Exhibit "F" and Exhibit "F-1".
 - b. OWNER shall diligently pursue construction of the phase 2 improvements and shall complete the construction of the phase 2 improvements and shall have requested CITY acceptance of the phase 2 improvements as shown in Exhibit "F-1" prior to OWNER requesting that CITY issue a building permit for the three hundred fiftieth (350th) Production Unit, including permits for Model Units.
 - c. OWNER shall provide periodic written progress reports to CITY commencing ninety (90) days after the OWNER initiates construction of the phase 2 improvements and each ninety (90) days thereafter regarding the progress of the construction of the phase 2 improvements until such Improvements are accepted by CITY.

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 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. 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, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) (“Non-Construction Agreement Offsite Property”). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER’S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner’s Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY’S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property.

At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

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

3.10 Tentative Parcel 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.

- 4.2.2 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. Such areas shall either be dedicated to the City or transferred to a homeowner's association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first building permit for a Production Unit issued to OWNER.
- 4.2.4 Acquisition of Grand Park Property. The Grand Park acreage identified in Tract Number 18662 shall be transferred to the CITY as a "Non-Program Interest" as provided in Section 3.6 of the Construction Agreement. Amendment. CITY shall acquire, pursuant to a separate acquisition agreement with OWNER, at the Fair Market Value as set forth in Section 3.6.2 of the Construction Agreement Amendment. Compensation to OWNER for such property may be in the form of Development Impact Fee Credit for use by OWNER as a credit against OWNER's Development Impact Fee obligation in the Parkland Facilities Development Fee category or other form of compensation paid directly to OWNER, as stated in the separate acquisition agreement.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the Ontario Ranch area will be as approved by the CITY. OWNER shall be responsible, at OWNER's sole cost and expense, for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map 19787 as shown on the attached Exhibit F. OWNER shall also be responsible for the construction and completion of any and all tentative parcel map conditions. Unless otherwise specified in the Subdivision Agreement/Parcel Map conditions, all other required Improvements for each Parcel Map, and all subsequent Parcel or Tract Maps for the Property 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 a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map Nos. 19787 and as required by any future Tract Maps for the Property. Notwithstanding the above, OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19787 may be developed prior to, concurrent with, or after the development of any of the other Parcels in Parcel Map 19787, subject to completion of the conditions of approval for the Parcel Map as determined by the City Engineer.

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

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that once OWNER has become a Member of NMC Builders LLC, CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. 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. 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 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. 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 applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

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

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the OWNER 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. Written Evidence of Compliance with Schools Obligations. OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any

entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.5.

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 Seven dollars (\$1,907.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development Density**" of the OWNER's Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days after the effective date of this Development Agreement.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) 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, 2018. 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-Seven Cents (\$.57) 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, 2018. 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 between the City and NMC Builders LLC require that the City shall not approve a final parcel map or tract map for the area of development within the Ontario Ranch served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment 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's agreement to become a Member of NMC Builders. OWNER shall become a Member of NMC Builders within ninety (90) days of the effective date of this Development Agreement.
- 4.7.3 CITY issuance Water Availability Equivalents. 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 effectiveness 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 OWNER may qualify for a partial refund of a portion of OWNER's Phase 2 Water Participation Fee, if OWNER's Phase 2 Water Participation Fee has been calculated and paid to CITY based on the Maximum Development Density and OWNER subsequently applies for, and CITY approves, Tract Maps that contain a lower number of residential parcels than the Maximum Development Density. OWNER may, at OWNER's option, notify CITY that OWNER may qualify for a partial refund of OWNER's paid Phase 2 Water Participation Fee based on CITY issuance of a reduced number of actual residential building permits for the Project. Such notice shall include the original calculation of the Phase 2 Water Participation Fee, and OWNER's recalculation of the Phase 2 Water Participation Fee based on the lower number of actual residential building permits and OWNER's calculation of the partial refund amount. OWNER agrees that CITY may modify the amount of the Phase 2 Water Participation Fee after OWNER pays such Phase 2 Water Participation Fee and the calculation of the amount of a partial refund, if any, shall consider that the Phase 2 Water Participation Fee may have increased during the period between when OWNER pays the Phase 2 Water Participation Fee based upon the Maximum Development Density and such time as OWNER may request a partial refund of the Phase 2 Water Participation Fee based on a reduced number of actual residential parcels. OWNER agrees that the calculation of the requested refund shall be based upon the Phase 2 Water Participation Fee in effect at the time that OWNER files a request for a refund. Within 20 days of receipt of the notice from OWNER, the CITY shall review OWNER's notice and make a determination that:

- a. OWNER's recalculation of the Phase 2 Water Participation Fee is accurate and the CITY shall issue a refund to OWNER of the amount requested by OWNER, or
- b. CITY shall notify OWNER of the need for revisions to OWNER's calculations and the need for OWNER to resubmit the request for a partial refund; or
- c. CITY shall notify OWNER that OWNER is not eligible for a partial refund of OWNER's Phase 2 Water Participation Fee based on a reduced number of actual building permits for residential units with the reasons for the rejection of OWNER's request.

If CITY approves OWNER's request for a partial refund of OWNER's paid Phase 2 Water Participation Fee, OWNER agrees that, prior to, and as a condition precedent to CITY's issuance of a partial refund to OWNER, OWNER shall surrender to CITY, the Certificate of Water Availability Equivalents previously issued to OWNER and the Certificate of DIF Credit in the Regional Water DIF category previously issued to OWNER by CITY. Upon surrender by OWNER of such Certificates to CITY, CITY shall reissue a Certificate of Water Availability Equivalents based on a reduced amount of Water Availability Equivalents required for OWNER's Project and CITY shall also reissue a Certificate of DIF Credit in the Regional Water DIF category based upon OWNER's reduced Phase 2 Water Participation Fee for the Property.

- 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.
- 4.7.5 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.
- 4.8 Storm Water Capacity Availability.
- 4.8.1 Requirement for Storm Water Treatment Capacity Availability. For each Tract Map within the Property OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability. Evidence of sufficient Storm Water Treatment Capacity Availability shall be provided for the area of a Tract Map shall be

provided to CITY prior to, and as a condition precedent to the recording of any final tract map. The amount of Storm Water Treatment Capacity Availability required shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

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

4.8.2 CITY agrees that OWNER, at OWNER's option, and, as an alternative to the requirements in Section 4.8.1, may choose not to provide evidence of sufficient Storm Water Treatment Capacity Availability for the area of a Tract Map within the Property. OWNER agrees that if OWNER does not provide evidence of sufficient Storm Water Treatment Capacity Availability the area within the Tract Map shall not 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 shall not apply to the area of the Tract Map. OWNER also agrees that if OWNER selects this option, OWNER shall provide on-site storm water treatment facilities to meet the requirements of the NPDES permit.

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

4.10 Edison Easement Improvements. OWNER shall develop as park or open space purposes that area within the Project areas owned in fee by Southern California Edison or in which Southern California Edison has an easement or license, as more particularly set forth in the Specific Plan. Said park or open space development shall be consistent with the New Model Colony Park Master Plan standards for park and open space development. Notwithstanding OWNER's development of park or open space areas as required by this Section 4.10, OWNER shall not be entitled to any credit, offset or reimbursement from the CITY for such park or open space development.

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 4.10, 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. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any 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. 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 Subsections 6.2 and 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**

"OWNERS"

Ronald C. Pietersma, Trustee of the
Ronald and Kristine Pietersma Family
Trust dated February 15, 1992

Kristine B. Pietersma, Trustee of the
Ronald and Kristine Pietersma Family
Trust dated February 15, 1992

Loyola Properties I, L.P.,
a California limited partnership

By: _____
Michael J. Bidart, Managing Member

"CITY"

CITY OF ONTARIO

By: _____
Scott Ochoa, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

A notary public or other officer completing this certificate certifies 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

County of San Bernardino

On _____ before me, _____, Notary
Public, _____ personally _____ appeared

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

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

WITNESS my hand and official seal.

Signature _____

(Seal

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT
Legal Description

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

TENTATIVE MAP NO. PM 19787 IS A SUBDIVISION OF THE LAND DESCRIBED AS FOLLOWS:

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE COUNTY OF SAN BERNARDINO BY DEED RECORDED SEPTEMBER 12, 1990 AS INSTRUMENT NO. 90-364062, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION KNOWN AS PARCEL 2 OF OFFICIAL MAP NO. 1099, FILED ON APRIL 18, 2016 AS INSTRUMENT NO. 2016-0145786, IN BOOK 2, PAGES 30 THROUGH 34, INCLUSIVE OF OFFICIAL MAPS, SAN BERNARDINO COUNTY RECORDS.

APN: 0218-241-31-0-000

EXHIBIT "B"

TO DEVELOPMENT AGREEMENT

Map Showing Property and its Location



**EXHIBIT “C”
TO DEVELOPMENT AGREEMENT
Existing Development Approvals**

On December 16, 2013, the Planning Commission:

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

On February 4, 2014, the City Council:

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

On October 24, 2017, the Planning Commission:

- a) Issued Resolution No. PC17-083 recommending City Council approval of the Development Agreement (File No. PDA17-001);
- b) Issued Resolution No. PC17-082 approving Tentative Parcel Map 19787 (File No. PMTT16-021).

**EXHIBIT “D”
TO DEVELOPMENT AGREEMENT
Existing Land Use Regulations**

These documents are listed for reference only:

1. The Grand Park Specific Plan Environmental Impact Report, Resolution No. 2014-002
2. The Grand Park Specific Plan (File No. PSP12-001, Ordinance No. 2985)
3. 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 "F"

TO DEVELOPMENT AGREEMENT

Required Infrastructure Improvements

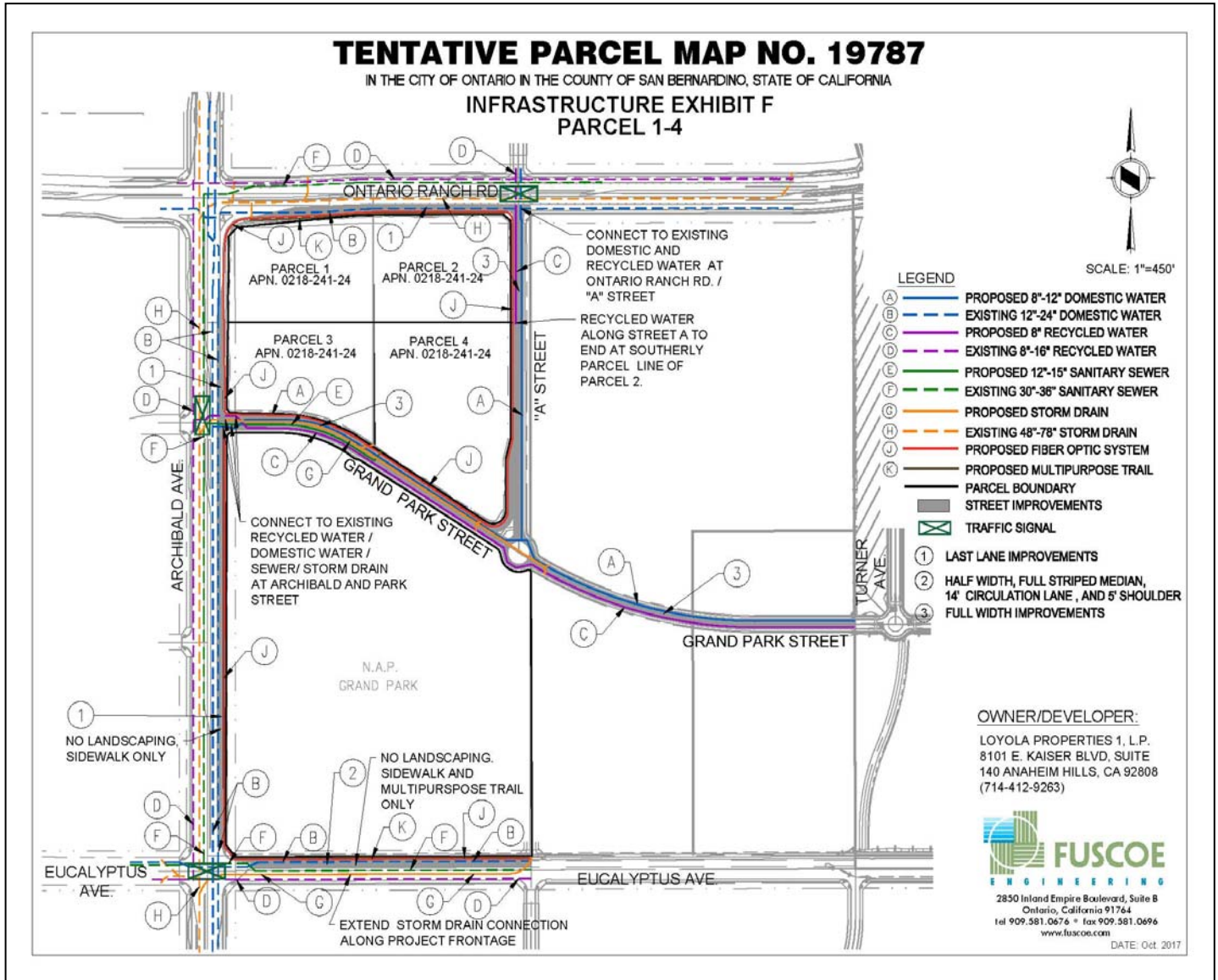


EXHIBIT "F-1"
TO DEVELOPMENT AGREEMENT
Phasing Plan of Required Infrastructure Improvements

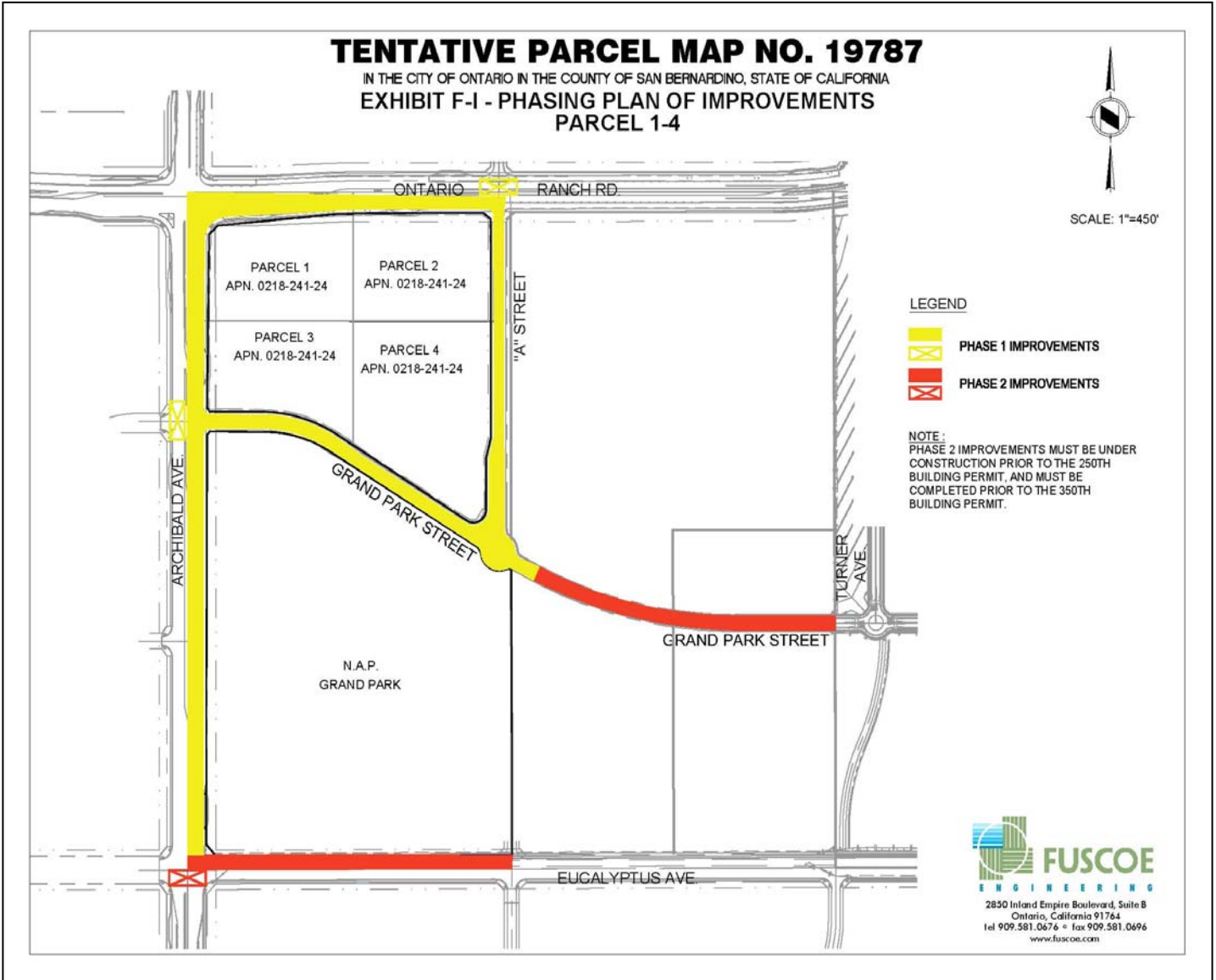


EXHIBIT "G"
TO DEVELOPMENT AGREEMENT

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section ____ of this Agreement between the City of Ontario, a California municipal corporation, and the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. a California limited partnership hereinafter called "OWNER", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Agreement", the City of Ontario hereby certifies based on CITY receipt of payment of OWNER's share of the funding for the Phase 2 Water Improvements, that OWNER is entitled to the following Net MDD Water Availability.

Amount of Net MDD _____ gpm

Scott Ochoa, City Manager

Dated: _____

Exhibit "H"

FORM OF CERTIFICATE OF REGIONAL OR LOCAL ADJACENT DIF CREDIT

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. a California limited partnership (hereinafter "OWNERS"), dated _____, 2017, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement", the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: \$ _____

Scott Ochoa, City Manager

Dated: _____

Exhibit "I"

FORM OF PLUME DISCLOSURE LETTER

CITY OF



ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

March 2017

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

**DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

CITY OF ONTARIO

Agenda Report
November 21, 2017

SECTION:
ADMINISTRATIVE REPORTS/
DISCUSSION/ACTION

SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF MULTIFAMILY HOUSING BONDS AND APPROVING RELATED BOND DOCUMENTS FOR THE ACQUISITION AND REHABILITATION OF SEASONS AT ONTARIO SENIOR APARTMENTS, LOCATED AT 955 NORTH PALMETTO AVENUE; AND AN AGREEMENT FOR THE SECOND AMENDED GROUND LEASE, AND THE FIRST LOAN MODIFICATION AGREEMENT

RECOMMENDATION: That the following actions be taken by the respective bodies:

- (A) That the City Council approve a resolution authorizing the issuance of multifamily housing revenue bonds in an amount not to exceed \$8,000,000 for the purpose of financing the acquisition and rehabilitation of Seasons at Ontario Senior Apartments (“the Project”), approving and authorizing the execution and delivery of any and all documents (on file with the Records Management Department) necessary to issue the bonds and implement the resolution, and ratifying and approving any action heretofore taken in connection with the bonds; and
- (B) That the Ontario Housing Authority Board (Authority) approve a resolution for the Second Amended Ground Lease Agreement and the First Loan Modification Agreement (on file with the Records Management Department).

COUNCIL GOALS: Pursue City’s Goals and Objectives by Working with Other Governmental Agencies

Focus Resources in Ontario’s Commercial and Residential Neighborhoods

FISCAL IMPACT: All costs and expenses related to the bond financing will be paid by LINC Ontario Apartments LP. The City will have no liability for payment of the bonds as the bonds are payable solely from the revenues from the property. Additionally, the City will receive an annual issuer fee in the amount of 0.125% of the initial principal bond amount.

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

Prepared by: Julie Bjork
Department: Housing and Municipal Services

City Manager Approval: 

Submitted to Council/O.H.A. 11/21/2017
Approved: _____
Continued to: _____
Denied: _____

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The Authority will extend its existing ground lease and loan for this property an additional 20 years from the existing term to conclude no later than December 31, 2075. As part of this extension, LINC Ontario Apartments LP will pay the Authority \$200,000 at escrow closing, consisting of a ground lease extension fee (\$100,000) and a loan payment (\$100,000). The Authority will also receive 81.46% of the residual cash flow as loan payments on the existing debt of \$4,190,156 (principal and interest as of December 31, 2017).

BACKGROUND: On October 3, 2017, the City Council held a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing pursuant to Internal Revenue Code Section 147(f) and approved the issuance of multifamily housing revenue bonds for the acquisition and rehabilitation of this property and an agreed-upon term sheet. Seasons at Ontario, located at 955 North Palmetto Avenue, is an existing 80-unit affordable senior housing development that was originally built in 1998 utilizing bonds and tax credit financing along with financial assistance from the Ontario Redevelopment Agency (“Agency”), in the form of a \$2.6 million loan and a ground lease. The Agency was subsequently abolished as part of the statewide abolishment of redevelopment agencies, and these assets were transferred to the Authority.

The key highlights of the LINC financing proposal include:

- Increase cash flow split to the Authority from 75% to 81.46%;
- Acquisition of the property by a new ownership entity that includes LINC Housing Corporation as the general partner. The new partnership will assume the Authority’s existing loan including principal and accrued interest;
- Elimination of an existing financial obligation to Ontario Mountain Avenue Partners (“OMAP”), which is currently in first position. With the elimination of this debt, cash flow would become available to make payments on the existing Authority loan;
- Interior and exterior rehabilitation totaling approximately \$3.1 million. This rehabilitation will include exterior painting of the buildings; replacement of water heaters, HVAC systems, new dual pane low-e windows, LED-light fixtures, new kitchen cabinetry and Energy Star appliances, installation of low water use landscaping, and creation of five (5) additional ADA units;
- Extension of the existing Authority ground lease, loan, and affordability restrictions to not later than December 31, 2075. The development is restricted to occupancy by very low-income and low-income seniors, many of whom earn less than \$10,000 per year; and
- Allow for two manager’s units at the property to match the current tax credit restrictions.

CDLAC staff has recommended the approval of the requested bond amount at the November 15, 2017 allocation meeting, with the substantially final bond documents being presented at this meeting for approval. The substantially final bond documents have been reviewed by City/Authority staff, financial advisors, bond counsel, and special council and are in appropriate form for City approval. The bond documents require that 8 units are reserved for very low-income tenants (50% of AMI), 70 units are reserved for low-income tenants (60% of AMI), and two units are reserved for on-site property managers for 55 years.

After CDLAC approval, City staff will work to finalize and execute all documents, close escrow on or about December 1, 2017, and work with the developer to start construction work immediately. The rehabilitation and equipping of the 80-unit housing facility is estimated to be completed within 12 months.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS RELATED TO THE FINANCING OF SEASONS AT ONTARIO APARTMENTS, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS, AND APPROVING ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Ontario (the "City") is authorized pursuant to Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Act"), to issue revenue bonds and loan the proceeds thereof to qualified borrowers for the purpose of financing the acquisition, construction/rehabilitation and development of multifamily housing projects for persons and families of low and very low income residing within the jurisdiction of the City; and

WHEREAS, the City hereby finds and declares that it is necessary, essential and a public purpose for the City to engage in a program (the "Program") of issuing revenue bonds of the City to finance the acquisition, construction, rehabilitation and development of multifamily rental housing, and has determined to borrow money for such purpose by the issuance of revenue bonds as authorized by the Act; and

WHEREAS, the City hereby finds and declares that this resolution is being adopted pursuant to the powers granted by the Act; and

WHEREAS, LINC Ontario Apartments LP, a California limited partnership (the "Borrower"), has requested that the City issue and sell the Bonds (hereinafter defined) for the purpose of making a loan to the Borrower to finance the acquisition, rehabilitation and equipping of an 80-unit multifamily rental housing facility for seniors located in the City, and commonly known as Seasons at Ontario (the "Project"); and

WHEREAS, there has been presented to the City the following:

- (1) A proposed form of Trust Indenture (the "Indenture") to be entered into by the City and U.S. Bank National Association, as trustee (the "Trustee");
- (2) A proposed form of Loan Agreement (the "Loan Agreement") to be entered into by the City, Compass Mortgage Corporation (the "Lender") and the Borrower; and
- (3) A proposed form of Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") to be entered into by the City, the Trustee and the Borrower with respect to the Project.

WHEREAS, on October 3, 2017, this City Council held a public hearing on the proposed issuance of the Bonds, as required under the Internal Revenue Code of 1986, following published notice of such hearing, and thereafter this City Council, as the "applicable elected representative" of the City, approved by resolution the issuance of the Bonds; and

WHEREAS, it is expected that the California Debt Limit Allocation Committee ("CDLAC") will adopt a resolution on November 15, 2017, authorizing the City to use \$8,000,000 of the State of California's allocation for private activity bonds (as approved, the "Allocation") to the City for the benefit of the Project; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the implementation of the Program as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act, and the City now desires to authorize the issuance of the Bonds, as provided herein.

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

SECTION 1. The City finds and determines that the foregoing recitals are true and correct.

SECTION 2. Pursuant to the Act and the Indenture, the issuance of City of Ontario Multifamily Housing Revenue Bonds (Seasons at Ontario Apartments) Series 2017A (the "Bonds"), in a combined aggregate principal amount not to exceed \$8,000,000, is hereby authorized; provided, however, in no event shall the amount of Bonds issued exceed the actual amount of the Allocation awarded by CDLAC. Any of the Mayor, the City Manager, the Administrative Services/Finance Director and the Housing and Municipal Services Director of the City (each, an "Authorized Signatory"), each acting alone, is hereby authorized and directed to execute the Bonds for and in behalf of the City by manual or facsimile signature, in the form set forth in the Indenture, with such changes, deletions and insertions as may be approved by such Authorized Signatory and bond counsel to the City (the "Bond Counsel"), such approvals being conclusively evidenced by the execution and delivery thereof, provided that the final maturity date of the Bonds shall not be more than 40 years from the date of issuance thereof. The Bonds, when executed, shall be delivered to or upon the order of the Lender.

In no event shall the Bonds be issued prior to the Allocation being awarded by CDLAC.

SECTION 3. The Indenture, in the form presented to this City Council, is hereby approved. The Authorized Signatories, each acting alone, are hereby authorized for and in behalf of the City to execute and deliver the Indenture with such changes, additions or deletions as may be approved by such Authorized Signatory and Bond Counsel, such approvals to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. The Loan Agreement, in the form presented to this City Council, is hereby approved. The Authorized Signatories, each acting alone, are hereby authorized for and in behalf of the City to execute and deliver the Loan Agreement with such changes, additions or deletions as may be approved by such Authorized Signatory and Bond Counsel, such approvals to be conclusively evidenced by the execution and delivery thereof.

SECTION 5. The Regulatory Agreement, in the form presented to this City Council, is hereby approved. The Authorized Signatories, each acting alone, are hereby authorized for and in behalf of the City to execute and deliver a Regulatory Agreement with such changes, additions or deletions as may be approved by such Authorized Signatory and Bond Counsel, such approvals to be conclusively evidenced by the execution and delivery thereof.

SECTION 6. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Program and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City, including the Authorized Signatories, the City Clerk and Bond Counsel, are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this Resolution and resolutions heretofore adopted by the City and in order to carry out the Program, including but not limited to those certificates, agreements and other documents described in the documents herein approved and any certificates, agreements or documents as may be necessary to further the purpose hereof or provide additional security for the Bonds, but which shall not create any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Bonds or otherwise under the documents listed above.

SECTION 7. Each Authorized Signatory, acting alone, is hereby authorized to execute and deliver any future amendments to the documents authorized to be executed and delivered pursuant to this Resolution ("Authorized Documents"), without further action of the City, for the purposes of (i) adding to the covenants and agreements of the Borrower; (ii) assigning or pledging additional security for any of the Bonds; (iii) permitting the qualification of the Indenture under the Trust Indenture Act of 1939 or any similar federal statutes hereafter in effect; (iv) providing for any additional procedures, covenants or agreements necessary to maintain the tax-exempt status of interest on the Bonds; or (v) modifying the provisions relating to the maturity, the amortization, the redemption, the interest rate or the method of determining the interest rate of the Bonds, and the corresponding provisions of the Indenture or other agreements relating to the Bonds; provided such amendments (1) are made pursuant to a written request of the Borrower (and, in the case of an amendment described in clause (vi), above, a written request of the owners of 100% of the principal amount of Bonds then outstanding), (2) are made pursuant to the terms of such documents, (3) are consistent with such documents, (4) do not require the consent of the holders of the Bonds which consent has not already been obtained, (5) in the case of an amendment described in clause (vi), above, will not result in a reissuance of the Bonds for federal income tax purposes, as evidenced by a letter from qualified bond counsel to the City, and (6) do not provide for any additional duties or costs with respect to the City for which the Borrower does not agree in advance to reimburse or indemnify the City therefor.

SECTION 8. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

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 Resolution No. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 21, 2017 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. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held November 21, 2017.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. OHA-_____

A RESOLUTION OF THE BOARD OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AGREEMENT WITH LINC ONTARIO APARTMENTS, LP, TO SECOND AMEND THE GROUND LEASE FOR THE SEASONS SENIOR AFFORDABLE HOUSING PROJECT.

WHEREAS, the Ontario Housing Authority (the "Authority") was created to, among other things, support and promote the development of housing in the community; and

WHEREAS, by that certain Ground Lease, dated as of May 29, 1997, as amended by the First Amendment to Ground Lease dated as of November 10, 1998 (as amended, the "Ground Lease"), the Ontario Redevelopment Agency (the "Redevelopment Agency") leased to Ontario Senior Housing, L.P. ("OSHLP") and OSHLP leased from Redevelopment Agency certain property described therein (the "Property"); and

WHEREAS, pursuant to the Ground Lease, OSHLP developed the Property with an 80-unit, affordable, senior housing project (the "Project"); and

WHEREAS, OSHLP proposes to transfer the Ground Lease to LINC Ontario Apartments, LP ("LOALP") which, in turn, proposes to substantially rehabilitate the Project on the condition that the term of the Ground Lease be extended (the "Proposed Project"); and

WHEREAS, the Redevelopment Agency was dissolved on February 1, 2012, pursuant to Section 34172 of the Health and Safety Code; and

WHEREAS, the Authority ("Authority"), pursuant to Health and Safety Code Section 34176 and adoption by the City Council of the City of Ontario, on May 5, 2015, of that certain Resolution No. SA-005, has succeeded to the rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the dissolved Redevelopment Agency, including, without limitation, the Ground Lease; and

WHEREAS, to accomplish the purposes of LOALP and the Authority, the parties have prepared that certain Agreement to Second Amend Ground Lease, dated as of November 7, 2017, a copy of which is on file in the office of the Secretary of the Authority (the "Agreement"); and

WHEREAS, the Proposed Project is consistent with the Housing Element of the General Plan of the City of Ontario; and

WHEREAS, the Agreement contains all of the terms, covenants, conditions, restrictions, obligations and provisions required by state and local law; and

WHEREAS, the Proposed Project is exempt from further environmental review under the California Environmental Quality Act ("CEQA"); and

WHEREAS, Authority has reviewed and duly considered all of the terms and conditions of the Agreement and believes that the Proposed Project is in the best interests of the City of Ontario and the health, safety, morals and welfare of its residents; and is in accord with the public purposes and provisions of applicable state and local law and requirements.

NOW, THEREFORE, BE IT RESOLVED by the Ontario Housing Authority as follows:

1. The Authority hereby finds that the Proposed Project is exempt from further environmental review under CEQA.

2. The Agreement is hereby approved with such minor changes, additions or deletions as may be approved by the Authority's Executive Director and General or Special Counsel, and the Executive Director is hereby authorized and directed to execute said Agreement behalf of the Authority.

3. The Executive Director is hereby authorized to take such actions and execute such documents and instruments as he deems necessary or desirable for implementation of the Agreement.

The Secretary of the Ontario Housing Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2017.

PAUL S. LEON, CHAIRMAN

ATTEST:

SHEILA MAUTZ, AUTHORITY SECRETARY

APPROVED AS TO FORM:

AUTHORITY COUNSEL

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

I, SHEILA MAUTZ, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA- was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held November 21, 2017, by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OHA duly passed and adopted by the Ontario Housing Authority at their regular meeting held November 21, 2017.

SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)