

**CITY OF ONTARIO  
CITY COUNCIL AND HOUSING AUTHORITY  
AGENDA  
DECEMBER 18, 2018**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Ruben Valencia**  
Council Member



**Scott Ochoa**  
City Manager

**John E. Brown**  
City Attorney

**Sheila Mautz**  
City Clerk

**James R. Milhiser**  
Treasurer

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

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

**ORDER OF BUSINESS** The regular City Council and Housing Authority meeting begins with 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*)**

**6:30 p.m.**

***ROLL CALL***

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

***PLEDGE OF ALLEGIANCE***

Council Member Dorst-Porada

***INVOCATION***

Pastor Don Rucker, First Church of the Nazarene

**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.

## **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**

### ***1. CANVASS OF GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018***

That the City Council adopt a resolution certifying the results of the General Municipal Election which was consolidated with the Statewide Election on November 6, 2018.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 6, 2018, DECLARING THE RESULT AND SUCH OTHER MATTERS AS PROVIDED BY LAW

## **SPECIAL CEREMONIES**

### ***OATHS OF OFFICE OF NEWLY ELECTED OFFICIALS***

### ***RECOGNITION OF FIRE CHIEF RETIREMENT***

### ***SWEARING IN OF FIRE CHIEF***

## **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.

### ***2. APPROVAL OF MINUTES***

Minutes for the regular meeting of the City Council and Housing Authority of November 20, 2018, approving same as on file in the Records Management Department.

### ***3. BILLS/PAYROLL***

**Bills** October 21, 2018 through November 3, 2018 and **Payroll** October 21, 2018 through November 3, 2018, when audited by the Finance Committee.

**4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19643, LOCATED AT THE NORTHEAST CORNER OF CARPENTER AVENUE AND REMINGTON AVENUE**

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Parcel Map No. 19643, located at the northeast corner of Carpenter Avenue and Remington Avenue.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19643, LOCATED AT THE NORTHEAST CORNER OF CARPENTER AVENUE AND REMINGTON AVENUE

**5. A RESOLUTION PERTAINING TO DECLARED PRIMA FACIE SPEED LIMITS ON CERTAIN STREETS WITHIN THE CITY**

That the City Council adopt a resolution rescinding Resolution 2017-098 and declaring prima facie speed limits on certain streets within the City.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RESCINDING RESOLUTION 2017-098 AND DECLARING PRIMA FACIE SPEED LIMITS ON CERTAIN STREETS WITHIN THE CITY.

**6. COOPERATIVE AGREEMENT WITH THE CITY OF FONTANA FOR THE CONSTRUCTION OF IMPROVEMENTS AT THE INTERSECTION OF ETIWANDA AVENUE AND AIRPORT DRIVE/SLOVER AVENUE**

That the City Council approve and authorize the City Manager to execute a Cooperative Agreement (on file with the Records Management Department) with the City of Fontana for the construction of improvements at the intersection of Etiwanda Avenue and Airport Drive/Slover Avenue.

**7. COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED JUNE 30, 2018**

That the City Council accept the City of Ontario's Comprehensive Annual Financial Report (CAFR) for the fiscal year ending June 30, 2018.

**8. A ZONE CHANGE (FILE NO. PZC18-002) TO ESTABLISH A ZONING DESIGNATION OF IG (GENERAL INDUSTRIAL) FOR 2.4 ACRES OF LAND LOCATED WITHIN NORTH LOOP DRIVE, GENERALLY WEST OF ETIWANDA AVENUE AND SOUTH OF THE INTERSTATE 10 FREEWAY**

That the City Council consider and adopt a City-initiated ordinance approving File No. PZC18-002.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PCZ18-002, A ZONE CHANGE TO ESTABLISH A ZONE OF IG (GENERAL INDUSTRIAL) ON A LOT TOTALING 2.4 ACRES OF LAND THAT CURRENTLY DOES NOT HAVE A ZONING DESIGNATION OR AN APN, TO BRING PROPERTY ZONING INTO CONSISTENCY WITH THE POLICY PLAN (GENERAL PLAN) LAND USE PLAN, AFFECTING PROPERTY LOCATED WITHIN NORTH LOOP DRIVE, GENERALLY WEST OF ETIWANDA AVENUE AND SOUTH OF THE INTERSTATE 10 FREEWAY, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: N/A. (SEE ATTACHMENT A) (PART OF CYCLE 4 FOR THE 2018 CALENDAR YEAR).

**9. CONSTRUCTION CONTRACT FOR THE POLICE PARKING LOT PROJECT/ONYX PAVING COMPANY, INC.**

That the City Council award Construction Contract No. 1033 to Onyx Paving Company, Inc. of Anaheim California, for the Police Parking Lot Project in the amount of \$404,000 plus a 10% contingency (\$40,400) for a total amount of \$444,400; authorize the City Manager to execute said contract (on file with the Records Management Department), authorize additional appropriations of \$100,775 from the General Fund, and authorize the filing of the notice of completion at the conclusion of all construction activities related to the project.

**10. A PROFESSIONAL SERVICES AGREEMENT FOR PRESORTING AND MAILING SERVICES/INLAND PRESORT & MAILING SERVICES**

That the City Council approve and authorize the City Manager to execute a one-year professional services agreement (on file with the Records Management Department) with Inland Presort & Mailing Services, of Redlands, California, with an estimated annual expenditure of \$275,000; and authorize the City Manager to extend the agreement for one additional year with the same terms and conditions.

**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.**

**11. A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE AMENDING SECTION 3-1.701 OF ARTICLE 7 OF CHAPTER 1 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE AND ADDING CHAPTER 31 TO TITLE 5 OF THE ONTARIO MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946**

That the City Council read by title only, waive further reading, and adopt an urgency ordinance amending Ontario Municipal Code Section 3-1.701 and adding Chapter 31 to Title 5 of the Ontario Municipal Code, imposing regulations upon sidewalk vending in compliance with Senate Bill 946.

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 URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 3-1.701 OF ARTICLE 7 OF CHAPTER 1 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE AND ADDING CHAPTER 31 TO TITLE 5 OF THE ONTARIO MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946.

**12. A PUBLIC HEARING TO CONSIDER RESOLUTIONS REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES); INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES; AND DISSOLUTION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 11 (ESPERANZA I)**

That the City Council:

- (A) Adopt a resolution establishing Community Facilities District No. 44 (Esperanza Services), authorizing the levy of special taxes within the community facilities district, and establishing an appropriations limit for the community facilities district;
- (B) Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 44 (Esperanza Services);
- (C) Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien;
- (D) Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 44 (Esperanza Services); and
- (E) Introduce and waive further reading of an ordinance dissolving City of Ontario Community Facilities District No. 11 (Esperanza I).

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, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT AND ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE COMMUNITY FACILITIES DISTRICT.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES).

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DISSOLVING CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 11 (ESPERANZA I).

**13. A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND CONCRETE HOLDING COMPANY OF CALIFORNIA, INC., PURSUANT TO GOVERNMENT CODE SECTION 53083; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS**

That the City Council take the following actions:

- (A) Hold the public hearing;

- (B) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and Concrete Holding Company of California, Inc., a Delaware Corporation, hereinafter referred to as “Concrete Holding”;
- (C) Adopt a resolution approving the Operating Covenant Agreement for no less than forty years, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (D) Direct City staff to file a Notice of Exemption based upon the City Council’s finding that the impacts for this existing facility is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment.

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, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE DEVELOPMENT OF A REGIONAL SALES OFFICE BY CONCRETE HOLDING COMPANY OF CALIFORNIA, INC. IN THE CITY OF ONTARIO AND APPROVING AN OPERATING COVENANT AGREEMENT.

## **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**

### ***14. A RESOLUTION AUTHORIZING THE ISSUANCE OF SPECIAL TAX BONDS FOR COMMUNITY FACILITIES DISTRICT NO. 25 (PARK PLACE FACILITIES PHASE II)***

That the City Council adopt a resolution authorizing the issuance of special tax bonds for Community Facilities District No. 25 (Park Place Facilities Phase II). The resolution:

- (A) Authorizes the issuance of special tax bonds for public improvements required to facilitate the development of the Park Place Facilities Phase II project;
- (B) Approves the forms of the Indenture of Trust, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement;
- (C) Authorizes a negotiated sale of the special tax bonds to Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) in accordance with the terms of the Bond Purchase Agreement; and

- (D) Authorizes the execution of the Indenture of Trust, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement by the City Manager, or his designee.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 25 (PARK PLACE FACILITIES PHASE II) SPECIAL TAX BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

## **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

*Agenda Report*  
December 18, 2018

**SECTION:  
ADMINISTRATIVE  
REPORTS/DISCUSSION/ACTION**

**SUBJECT: CANVASS OF GENERAL MUNICIPAL ELECTION ON NOVEMBER 6, 2018**

**RECOMMENDATION:** That the City Council adopt a resolution certifying the results of the General Municipal Election which was consolidated with the Statewide Election on November 6, 2018.

**COUNCIL GOALS:** Operate in a Businesslike Manner

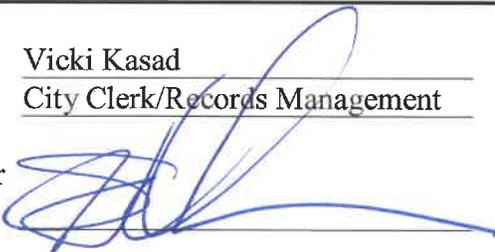
**FISCAL IMPACT:** None.

**BACKGROUND:** In accordance with our status as a general law city, elections are held every two years. In 1988, the City Council decided to consolidate the City's Municipal Election with San Bernardino County. The Registrar of Voters conducted the elections at our request and has completed a canvass of the votes and provided Certification of those results, which is included as Exhibit "A" to the Resolution submitted for adoption.

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

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

City Manager  
Approval:



Submitted to Council/O.H.A. 12/18/2018

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

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

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 6, 2018, DECLARING THE RESULT AND SUCH OTHER MATTERS AS PROVIDED BY LAW

WHEREAS, a General Municipal Election was held and conducted in the City of Ontario, California, on Tuesday, November 6, 2018, as required by law; and

WHEREAS, notice of the election was given in time, form and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, pursuant to Resolution Nos. 2018-047 and 2018-048 adopted on June 5, 2018, the Registrar of Voters canvassed the returns of the election and has certified the results to this City Council, the results are received and the appropriate sections are attached and made a part hereof as "Exhibit A."

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the whole number of votes cast in the precincts except Vote by Mail ballots was 15,736. That the whole number of Vote by Mail ballots cast in the City was 21,514, making a total of 37,250 votes cast in the City.

SECTION 2. That the names of persons voted for at the election for Mayor are as follows:

Samuel (Sam) Crowe  
Paul S. Leon  
Rodolfo G. Favila  
Richard Thomas William Reyes Galvez

That the names of persons voted for at the election for Council are as follows:

Norberto Corona  
Josef Morales Nikyar  
Alan D. Wapner  
Paul C. Mim Mack  
Jim W. Bowman

SECTION 3. That the number of votes given at each precinct and the number of votes given in the City to each of the persons above named for the respective offices for which the persons were candidates are listed in Exhibit "A" attached.

SECTION 4. The City Council does declare and determine that Paul S. Leon was elected as Mayor for the full term of four years; that Alan Wapner was elected as Member of the City Council for the full term of four years; and that Jim W. Bowman was elected as Member of the City Council for the full term of four years.

SECTION 5. The City Clerk shall enter on the records of the City Council of the City, a statement of the result of the election, showing: (1) The whole number of votes cast in the City; (2) The names of the persons voted for; (3) For what office each person was voted; (4) The number of votes given at each precinct to each person; and (5) The total number of votes given to each person.

SECTION 6. That the City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated; that the City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 18<sup>th</sup> day of December 2018.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, Sheila Mautz, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"



SAN BERNARDINO COUNTY Statement of Vote  
2018 STATEWIDE GENERAL ELECTION

100147		CITY OF ONTARIO, CITY COUNCIL													
	Registration	Ballots Cast	Turnout (%)		NORBERTO CORONA	JOSEF MORALES MIKYAR	ALAN WAPNER	PAUL C. MIIM MACK	JIM W. BOWMAN						
ONT1027 1027	0	0	0.00		0	0	0	0	0						
ONT1027 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1398 1398	1350	375	27.78		101	48	167	36	111						
ONT1398 - Vote by Mail	1350	407	30.15		74	71	206	45	148						
ONT1399 1399	1004	205	20.42		73	34	70	30	54						
ONT1399 - Vote by Mail	1004	338	33.67		92	30	168	52	121						
ONT1400 1400	0	0	0.00		0	0	0	0	0						
ONT1400 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1401 1401	1206	350	29.02		68	52	153	47	123						
ONT1401 - Vote by Mail	1206	411	34.08		87	43	182	75	175						
ONT1402 1402	1973	453	22.96		139	65	199	56	102						
ONT1402 - Vote by Mail	1973	625	31.68		147	79	306	99	236						
ONT1403 1403	1408	311	22.09		79	43	126	38	86						
ONT1403 - Vote by Mail	1408	470	33.38		106	54	248	74	174						
ONT1404 1404	905	285	31.49		51	35	146	42	132						
ONT1404 - Vote by Mail	905	369	40.77		58	44	172	85	188						
ONT1405 1405	776	248	31.96		66	34	93	25	75						
ONT1405 - Vote by Mail	776	272	35.05		49	24	140	49	119						
ONT1406 1406	583	162	27.79		37	34	62	24	50						
ONT1406 - Vote by Mail	583	170	29.16		35	23	76	25	66						
ONT1407 1407	1139	277	24.32		82	53	103	23	82						
ONT1407 - Vote by Mail	1139	384	33.71		124	42	193	22	148						
ONT1408 1408	186	30	16.13		13	6	9	2	8						
ONT1408 - Vote by Mail	186	45	24.19		12	7	16	6	18						
ONT1409 1409	0	0	0.00		0	0	0	0	0						
ONT1409 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1410 1410	722	151	20.91		38	22	58	17	53						
ONT1410 - Vote by Mail	722	211	29.22		58	29	98	22	71						
ONT1411 1411	984	233	23.68		73	42	90	16	81						
ONT1411 - Vote by Mail	984	305	31.00		86	58	132	31	117						
ONT1412 1412	1613	379	23.50		125	56	135	37	102						
ONT1412 - Vote by Mail	1613	459	28.46		143	68	209	43	158						
ONT1413 1413	660	146	22.12		56	18	57	9	37						
ONT1413 - Vote by Mail	660	160	24.24		41	34	66	15	50						
ONT1414 1414	1180	241	20.42		85	53	97	20	58						
ONT1414 - Vote by Mail	1180	337	28.56		91	34	157	30	120						
ONT1415 1415	3	0	0.00		0	0	0	0	0						
ONT1415 - Vote by Mail	3	2	66.67												
ONT1416 1416	1244	272	21.86		94	42	110	18	72						
ONT1416 - Vote by Mail	1244	331	26.61		88	55	145	49	104						
ONT1417 1417	16	1	6.25												
ONT1417 - Vote by Mail	16	5	31.25		1	2	1	1	2						
ONT1418 1418	1300	289	22.23		97	59	115	24	79						
ONT1418 - Vote by Mail	1300	431	33.15		119	61	217	50	188						
ONT1419 1419	725	183	25.24		40	25	79	15	51						
ONT1419 - Vote by Mail	725	258	35.59		74	39	110	38	95						
ONT1420 1420	1186	275	23.19		80	28	113	28	74						
ONT1420 - Vote by Mail	1186	394	33.22		96	56	197	42	157						
ONT1421 1421	1397	309	22.12		84	42	132	29	81						
ONT1421 - Vote by Mail	1397	392	28.06		89	52	210	33	126						
ONT1422 1422	676	148	21.89		40	24	52	17	49						
ONT1422 - Vote by Mail	676	206	30.47		54	27	89	22	86						
ONT1423 1423	8	2	25.00												
ONT1423 - Vote by Mail	8	5	62.50		2	3	0	0	2						
ONT1424 1424	836	148	17.70		41	23	78	13	41						
ONT1424 - Vote by Mail	836	390	46.65		64	40	214	43	172						
ONT1425 1425	168	25	14.88		4	6	8	6	8						
ONT1425 - Vote by Mail	168	70	41.67		15	9	37	13	25						
ONT1426 1426	986	284	26.77		69	37	107	21	73						
ONT1426 - Vote by Mail	986	357	36.21		86	33	211	32	126						
ONT1427 1427	695	159	22.88		43	24	73	11	46						

SAN BERNARDINO COUNTY Statement of Vote  
2018 STATEWIDE GENERAL ELECTION

CITY OF ONTARIO, CITY COUNCIL															
100147	Registration	Ballots Cast	Turnout (%)		NORBERTO CORONA	JOSEF MORALES MIKYAR	ALAN WAPNER	PAUL C. MIH MACK	JIM W. BOWMAN						
ONT1427 - Vote by Mail	695	205	29.50		63	26	63	15	65						
ONT1428 1428	299	69	23.08		26	15	24	8	17						
ONT1428 - Vote by Mail	299	57	19.06		14	6	28	6	21						
ONT1429 1429	1684	398	23.63		102	60	147	39	122						
ONT1429 - Vote by Mail	1684	485	28.80		141	50	225	63	153						
ONT1430 1430	1447	289	19.97		69	28	144	19	96						
ONT1430 - Vote by Mail	1447	486	33.59		121	69	229	50	195						
ONT1431 1431	1072	267	24.91		82	25	113	25	72						
ONT1431 - Vote by Mail	1072	312	29.10		67	31	160	31	114						
ONT1432 1432	1939	376	19.39		128	43	136	21	116						
ONT1432 - Vote by Mail	1939	482	24.86		172	67	199	44	158						
ONT1433 1433	1575	332	21.08		97	52	111	27	76						
ONT1433 - Vote by Mail	1575	504	32.00		139	69	239	63	171						
ONT1434 1434	1869	440	23.54		112	53	181	35	124						
ONT1434 - Vote by Mail	1869	691	36.97		173	72	348	58	246						
ONT1435 1435	729	184	25.24		45	20	80	22	52						
ONT1435 - Vote by Mail	729	218	29.90		53	16	105	27	81						
ONT1436 1436	1024	235	22.95		60	29	97	11	65						
ONT1436 - Vote by Mail	1024	316	30.86		100	45	147	34	109						
ONT1437 1437	107	20	18.69		6	2	6	1	4						
ONT1437 - Vote by Mail	107	39	36.45		11	2	14	1	12						
ONT1438 1438	616	109	17.69		34	22	57	7	27						
ONT1438 - Vote by Mail	616	242	39.29		51	26	131	18	105						
ONT1439 1439	956	168	17.57		34	22	72	13	48						
ONT1439 - Vote by Mail	956	420	43.93		82	36	223	41	142						
ONT1440 1440	949	215	22.66		51	21	90	20	59						
ONT1440 - Vote by Mail	949	325	34.25		66	34	177	26	132						
ONT1441 1441	1458	369	25.31		105	50	147	40	88						
ONT1441 - Vote by Mail	1458	498	34.16		111	48	268	41	185						
ONT1442 1442	1507	402	26.68		118	45	170	26	123						
ONT1442 - Vote by Mail	1507	521	34.57		132	66	266	48	211						
ONT1443 1443	1786	507	28.39		128	52	261	31	166						
ONT1443 - Vote by Mail	1786	648	36.28		136	67	355	61	274						
ONT1444 1444	1555	453	29.13		124	60	180	40	130						
ONT1444 - Vote by Mail	1555	557	35.82		156	75	267	57	180						
ONT1445 1445	0	0	0.00		0	0	0	0	0						
ONT1445 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1446 1446	1	1	100.00												
ONT1446 - Vote by Mail	1	0	0.00		0	0	0	0	0						
ONT1447 1447	0	0	0.00		0	0	0	0	0						
ONT1447 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1448 1448	0	0	0.00		0	0	0	0	0						
ONT1448 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1449 1449	0	0	0.00		0	0	0	0	0						
ONT1449 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1450 1450	202	51	25.25		15	2	29	4	14						
ONT1450 - Vote by Mail	202	69	34.16		21	14	29	3	29						
ONT1451 1451	5	0	0.00		0	0	0	0	0						
ONT1451 - Vote by Mail	5	2	40.00												
ONT1452 1452	2091	455	21.76		109	64	141	36	89						
ONT1452 - Vote by Mail	2091	624	29.84		125	82	270	64	199						
ONT1453 1453	11	6	54.55		1	0	5	0	2						
ONT1453 - Vote by Mail	11	1	9.09												
ONT1570 1570	471	74	15.71		31	14	23	4	18						
ONT1570 - Vote by Mail	471	126	26.75		35	21	52	13	38						
ONT1571 1571	1218	310	25.45		63	41	126	54	102						
ONT1571 - Vote by Mail	1218	432	35.47		93	47	188	84	162						
ONT1572 1572	1235	344	27.85		102	61	134	39	106						
ONT1572 - Vote by Mail	1235	374	30.28		105	49	170	42	145						
ONT1576 1576	185	34	18.38		11	0	13	5	6						
ONT1576 - Vote by Mail	185	61	32.97		16	4	33	5	23						

\*\*\*\*\* Insufficient Turnout to Protect Voter Privacy \*\*\*\*\*

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SAN BERNARDINO COUNTY Statement of Vote  
2018 STATEWIDE GENERAL ELECTION

100147		CITY OF ONTARIO, CITY COUNCIL													
	Registration	Ballots Cast	Turnout (%)		NORBERTO CORONA	JOSEF MORALES MIKYAR	ALAN WAPNER	PAUL C. MIIR MACK	JIM W. BOWMAN						
ONT1577 1577	266	62	23.31		19	9	30	7	11						
ONT1577 - Vote by Mail	266	72	27.07		13	4	49	1	26						
ONT1730 1730	486	102	20.99		14	12	63	15	39						
ONT1730 - Vote by Mail	486	180	37.04		47	13	105	14	64						
ONT1731 1731	1427	314	22.00		85	44	157	37	92						
ONT1731 - Vote by Mail	1427	528	37.00		158	61	276	70	197						
ONT1732 1732	547	137	25.05		32	10	55	9	41						
ONT1732 - Vote by Mail	547	211	38.57		39	26	121	12	94						
ONT1841 1841	73	15	20.55		6	1	7	2	4						
ONT1841 - Vote by Mail	73	26	35.62		0	6	8	7	8						
ONT1842 1842	935	167	17.86		52	31	51	18	31						
ONT1842 - Vote by Mail	935	204	21.82		74	26	87	25	65						
ONT1843 1843	50	14	28.00		7	2	2	0	3						
ONT1843 - Vote by Mail	50	16	32.00		3	0	6	1	5						
ONT1849 1849	532	161	30.26		44	24	86	14	48						
ONT1849 - Vote by Mail	532	172	32.33		39	18	94	13	63						
ONT1954 1954	816	200	24.51		48	27	87	19	60						
ONT1954 - Vote by Mail	816	366	44.85		86	48	198	35	161						
ONT1955 1955	507	115	22.68		41	19	38	16	28						
ONT1955 - Vote by Mail	507	129	25.44		46	22	57	10	41						
ONT1956 1956	292	82	28.08		31	11	38	8	18						
ONT1956 - Vote by Mail	292	60	20.55		26	4	28	5	22						
ONT1957 1957	247	53	21.46		18	1	29	4	16						
ONT1957 - Vote by Mail	247	62	25.10		21	2	25	10	24						
ONT1958 1958	0	0	0.00		0	0	0	0	0						
ONT1958 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT1959 1959	260	59	22.69		19	9	19	8	14						
ONT1959 - Vote by Mail	260	77	29.62		24	7	36	5	32						
ONT1960 1960	489	156	31.90		31	31	63	26	58						
ONT1960 - Vote by Mail	489	146	29.86		20	16	85	22	60						
ONT1961 1961	674	193	28.64		42	23	91	32	83						
ONT1961 - Vote by Mail	674	279	41.39		41	27	128	70	128						
ONT1963 1963	60	17	28.33		7	2	3	0	2						
ONT1963 - Vote by Mail	60	13	21.67		2	0	5	1	7						
ONT1964 1964	273	47	17.22		17	9	13	1	16						
ONT1964 - Vote by Mail	273	51	18.68		17	11	18	4	14						
ONT1965 1965	0	0	0.00		0	0	0	0	0						
ONT1965 - Vote by Mail	0	0	0.00		0	0	0	0	0						
ONT2180 2180	229	46	20.09		13	4	17	5	15						
ONT2180 - Vote by Mail	229	70	30.57		32	10	26	9	19						
ONT1502 1502	7	1	14.29												
ONT1502 - Vote by Mail	7	2	28.57												
ONT1503 1503	114	17	14.91		11	2	8	4	3						
ONT1503 - Vote by Mail	114	56	49.12		9	9	33	5	19						
ONT1504 1504	1521	346	22.75		97	33	170	30	99						
ONT1504 - Vote by Mail	1521	560	36.82		123	55	326	48	200						
ONT1505 1505	318	97	30.50		21	8	47	9	34						
ONT1505 - Vote by Mail	318	118	37.11		23	15	72	15	45						
ONT1506 1506	1491	439	29.44		117	65	211	42	125						
ONT1506 - Vote by Mail	1491	537	36.02		100	70	288	64	238						
ONT1507 1507	1543	411	26.64		116	55	173	34	118						
ONT1507 - Vote by Mail	1543	586	37.98		126	84	336	67	258						
ONT1508 1508	1279	365	28.54		114	55	147	36	91						
ONT1508 - Vote by Mail	1279	340	26.58		94	34	178	40	130						
ONT1509 1509	105	21	20.00		2	3	11	5	10						
ONT1509 - Vote by Mail	105	32	30.48		3	4	22	3	22						
ONT1850 1850	136	32	23.53		4	7	11	4	9						
ONT1850 - Vote by Mail	136	44	32.35		8	3	20	7	10						
ONT1851 1851	197	38	19.29		4	2	17	3	14						
ONT1851 - Vote by Mail	197	78	39.59		14	7	46	10	22						
ONT1502 1502															
ONT1502 - Vote by Mail															
ONT1503 1503															
ONT1503 - Vote by Mail															
ONT1504 1504															
ONT1504 - Vote by Mail															
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ONT1506 1506															
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ONT1507 1507															
ONT1507 - Vote by Mail															
ONT1508 1508															
ONT1508 - Vote by Mail															
ONT1509 1509															
ONT1509 - Vote by Mail															
ONT1850 1850															
ONT1850 - Vote by Mail															
ONT1851 1851															
ONT1851 - Vote by Mail															

\*\*\*\*\* Insufficient Turnout to Protect Voter Privacy \*\*\*\*\*  
 \*\*\*\*\* Insufficient Turnout to Protect Voter Privacy \*\*\*\*\*

**SAN BERNARDINO COUNTY Statement of Vote  
2018 STATEWIDE GENERAL ELECTION**

100147	CITY OF ONTARIO, CITY COUNCIL														
	Registration	Ballots Cast	Turnout (%)		NORBERTO CORONA	JOSEF MORALES NIKYAR	ALAN WAPNER	PAUL C. AMIN MACK	JIM W. BOWMAN						
Precinct Totals	65794	15736	23.92		4366	2186	6563	1523	4514						
Vote by Mail Totals	65794	21514	32.70		5262	2619	10671	2466	8116						
Grand Totals	65794	37250	56.62		9628	4805	17234	3989	12632						
California	65794	37250	56.62		9628	4805	17234	3989	12632						
San Bernardino County	65794	37250	56.62		9628	4805	17234	3989	12632						
State Bd of Equal 1	65794	37250	56.62		9628	4805	17234	3989	12632						
U. S. Representative District 31	0	0	0.00		0	0	0	0	0						
U. S. Representative District 35	65794	37250	56.62		9628	4805	17234	3989	12632						
Senatorial District 20	65794	37250	56.62		9628	4805	17234	3989	12632						
Senatorial District 23	0	0	0.00		0	0	0	0	0						
State Assembly District 40	0	0	0.00		0	0	0	0	0						
State Assembly District 52	65794	37250	56.62		9628	4805	17234	3989	12632						
Supervisorial District 2	0	0	0.00		0	0	0	0	0						
Supervisorial District 4	65794	37250	56.62		9628	4805	17234	3989	12632						
City of Ontario	65794	37250	56.62		9628	4805	17234	3989	12632						

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19643, LOCATED AT THE NORTHEAST CORNER OF CARPENTER AVENUE AND REMINGTON AVENUE**

**RECOMMENDATION:** That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Parcel Map No. 19643, located at the northeast corner of Carpenter Avenue and Remington Avenue.

**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

**FISCAL IMPACT:** None. All public infrastructure improvements required for this subdivision will be constructed by the developer at its sole cost.

**BACKGROUND:** Final Parcel Map No. 19643, consisting of two (2) industrial lots on 64.0 acres, as shown on Exhibit A, has been submitted by the developer, Colony Commerce Center LP, of Newport Beach, California (Mr. Jonathan Pearce, Executive Vice President).

Tentative Parcel Map No. 19643 was approved by the Planning Commission (6 to 0) on August 22, 2017, and is consistent with the adopted Colony Commerce Center West Specific Plan.

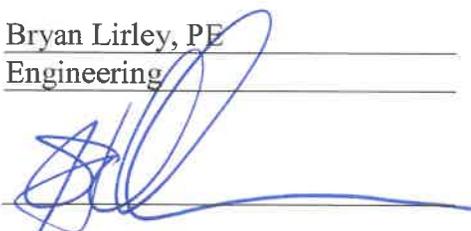
Improvements will include AC pavement, sidewalk, landscaped parkways, fiber optic conduits, fire hydrants, sewer, water, storm drain laterals, and street lights. The improvements in parkway landscaping will be consistent with current City approved drought measures.

The developer has entered into an improvement agreement with the City for Final Parcel Map No. 19643 and has posted adequate security to ensure construction of the required public improvements.

**STAFF MEMBER PRESENTING:** Scott Murphy, AICP, Executive Director, Development Agency

Prepared by: Bryan Lirley, PE  
Department: Engineering

City Manager  
Approval:

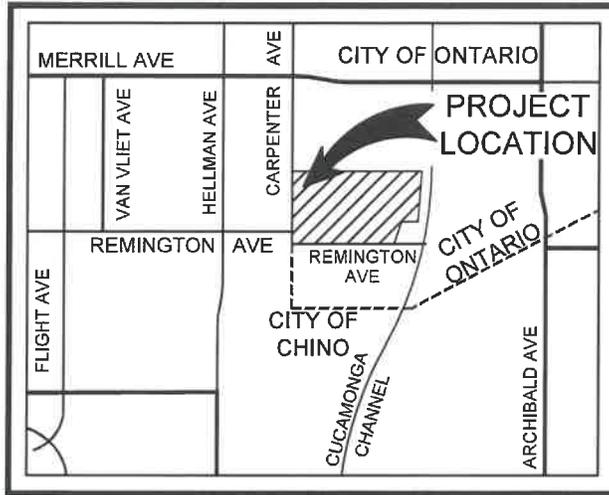


Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

4

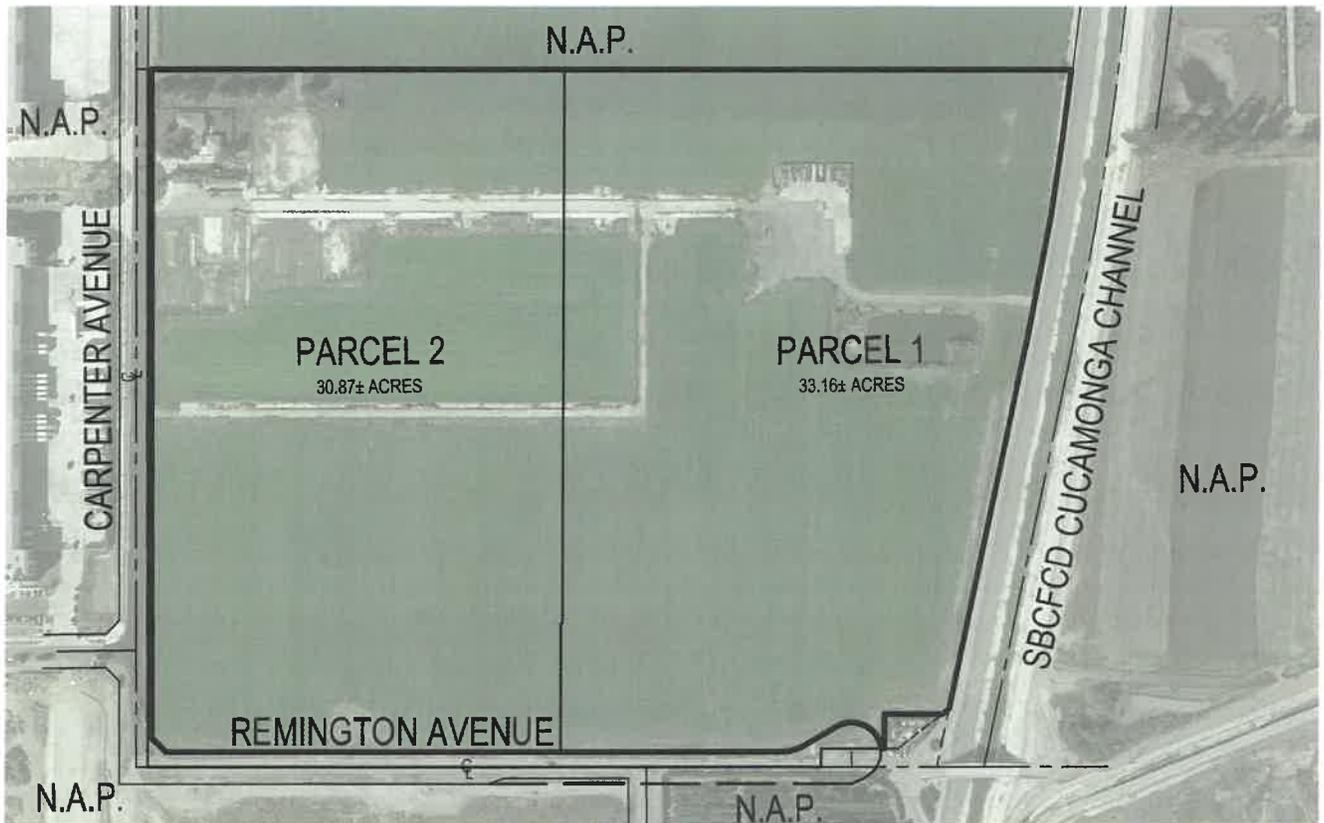
This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

# EXHIBIT A PM 19643



**VICINITY MAP**

N.T.S



4141 Inland Empire Blvd, Suite 250  
Ontario California 91764  
Phone: 909.481.5750

**DAVID EVANS  
AND ASSOCIATES INC.**

**CITY OF ONTARIO  
ENGINEERING DEPARTMENT**

PM-19643  
COLONY COMMERCE ONTARIO WEST LP

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19643, LOCATED AT THE NORTHEAST CORNER OF CARPENTER AVENUE AND REMINGTON AVENUE

WHEREAS, Tentative Parcel Map No. 19643, submitted for approval by the developer, Colony Commerce Center LP, of Newport Beach, California (Mr. Jonathan Pearce, Executive Vice President) was approved by the Planning Commission of the City of Ontario on August 22, 2017; and

WHEREAS, Tentative Parcel Map No. 19643 consists of two (2) numbered lots, being a subdivision of a portion of the south ½ of Section 22, and those portions of Government Lots 3, 4, 5 and 8, all in the south ½ of Section 22, Township 2 South, Range 7 West, San Bernardino Meridian, according to the official plat of said land filed in the District Land Office September 16, 1983; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Parcel Map No. 19643, said developer has offered an improvement agreement, together with good and sufficient security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, the requirement for the preparation of Covenants, Conditions and Restrictions (CC&Rs), approved by the City Attorney's office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners has been deferred to a date that coincides with the recordation of the subject Parcel Map; and

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

1. That said improvement agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Parcel Map No. 19643, be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of December 2018.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-        duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION PERTAINING TO DECLARED PRIMA FACIE SPEED LIMITS ON CERTAIN STREETS WITHIN THE CITY**

**RECOMMENDATION:** That the City Council adopt a resolution rescinding Resolution 2017-098 and declaring prima facie speed limits on certain streets within the City.

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

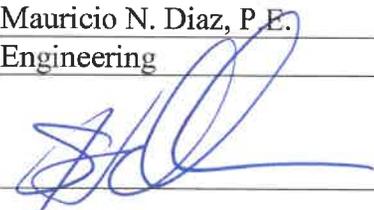
**FISCAL IMPACT:** There is no direct fiscal impact. The adopted FY 2018-19 Operating Budget includes appropriations for the repair, maintenance, and routine replacement of various street signs throughout the City.

**BACKGROUND:** In accordance with Sections 4-6.1501 and 4-6.1502 of the Ontario Municipal Code, the City Council declares new or revised prima facie speed limits by resolution. On August 15, 2017, the City Council adopted Resolution 2017-098 establishing speed limits on certain City streets. These limits were established in accordance with the California Vehicle Code which requires that engineering and traffic surveys be conducted before establishing speed limits on local roadways.

In order to ensure continual compliance with the California Vehicle Code, and ensure that effective and legal enforcement can be provided, new engineering and traffic surveys are conducted throughout the City on a programmatic basis. Specifically, new surveys were conducted for any roadways with surveys older than 2013. As a result, the following changes are proposed (**Bold Type** indicates segments with a recommended increase to the speed limit):

Campus Avenue	Francis Street to Riverside Drive: 45 mph to 40 mph
Fourth Street	Vineyard Avenue to Archibald Avenue: 55 mph to 45 mph
Guasti Road	<b>Archibald Avenue to Haven Avenue: 45 mph to 50 mph</b>

**STAFF MEMBER PRESENTING:** Scott Murphy, AICP, Executive Director, Development Agency

Prepared by: Mauricio N. Diaz, P.E.  
Department: Engineering  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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Inland Empire Boulevard	Vineyard Avenue to Archibald Avenue: 50 mph to 45 mph
Philadelphia Street	<b>Archibald Avenue to Mission Boulevard: 45 mph to 50 mph</b>
Riverside Drive	<b>Euclid Avenue to Campus Avenue: 45 mph to 50 mph</b>
Rockefeller Avenue	<b>Airport Drive to Jurupa Street: 35 mph to 40 mph</b>

It should be noted that the ongoing construction of new homes and infrastructure in the Ontario Ranch area has removed portions of three roadway segments from the existing roadway network. The remaining portions serve only to provide access to areas not yet under construction. As these segments are short and not through roadways, they are no longer candidates for speed control. Specifically, the three roadway segments are Cleveland Avenue from Edison Avenue to Eucalyptus Avenue; Edison Avenue from Archibald Avenue to Cleveland Avenue; and Eucalyptus Avenue from Archibald Avenue to Hamner Avenue.

Staff recommends that Resolution 2017-098 be rescinded, thereby abolishing all existing speed limits, and adopting the proposed new resolution which will update speed limits with the proposed deletions and revisions.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RESCINDING RESOLUTION 2017-098 AND DECLARING PRIMA FACIE SPEED LIMITS ON CERTAIN STREETS WITHIN THE CITY.

WHEREAS, the California Vehicle Code authorizes local authorities to designate and regulate speed zones within their jurisdictions to facilitate the safe and orderly movement of traffic; and

WHEREAS, Sections 4-6.1501 and 4-6.1502 of the City of Ontario Municipal Code state that the City Council may by resolution declare prima facie speed limits, based upon the findings of engineering and traffic surveys; and

WHEREAS, on August 15, 2017, the City Council adopted Resolution 2017-098 establishing prima facie speed limits; and

WHEREAS, new engineering and traffic surveys have been taken and the following declared prima facie speed limits are based on the results of said engineering and traffic surveys.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario does hereby rescind Resolution 2017-098 and declares that the following prima facie speed limits are the most appropriate to facilitate the safe and orderly movement of traffic:

Street	Segment	Declared Prima Facie Speed Limit (mph)	Date of Survey
Airport Dr	Haven Ave to Etiwanda Ave	45	3/25/2013
Archibald Ave	Fourth St to Airport Dr	50	4/21/2017
Archibald Ave	Jurupa St to Walnut St	45	8/9/2018
Archibald Ave	Walnut St to Chino Ave	50	4/21/2017
Archibald Ave	Chino Ave to South City Limits	55	4/21/2017
Baker Ave	Eighth St to Fourth Street	40	8/9/2018
Baker Ave	Mission Blvd to Philadelphia St	45	8/9/2018
Benson Ave	(Eastside) I-10 Freeway to Brooks St	35	1/14/2013
Benson Ave	(Eastside) Mission Blvd to Philadelphia St	40	1/14/2013
Bon View Ave	Holt Blvd to Philadelphia St	40	1/16/2013
Bon View Ave	Riverside Dr to Merrill Ave	45	1/15/2013
Brooks St	Benson Avenue to Mountain Ave	45	1/14/2013
Campus Ave	I-10 Freeway to Holt Blvd	35	10/4/2018
Campus Ave	Holt Blvd to Chino Ave	40	1/15/2013
Center Ave	Fourth Street to Inland Empire Blvd	35	8/9/2018
Chino Ave	Euclid Ave to Archibald Ave	50	8/9/2018

Chino Ave	Archibald Ave to Turner Ave	40	8/9/2018
Commerce Pkwy	Airport Dr to Jurupa St	45	1/10/2013
Concours St	Center Ave to Milliken Ave	45	8/9/2018
Convention Center Wy	Vineyard Ave to Holt Blvd	40	8/9/2018
D St	Benson Ave to Grove Ave	35	10/4/2018
D St	Grove Ave to Vineyard Ave	40	10/4/2018
Deer Creek Loop	North and South Loop	30	1/15/2013
Dupont Ave	Airport Dr to Francis St	40	1/10/2013
Edison Ave	Euclid Ave to Archibald Ave	50	8/13/2018
Eighth St	West City Limit to East City Limit	40	1/7/2013
Etiwanda Ave	Fourth St to Philadelphia St	50	1/8/2013
Eucalyptus Ave	Euclid Ave to Carpenter Ave	45	11/2/2018
Fifth St	Benson Ave to I-10 Freeway	35	10/2/2018
Fifth St	Grove Ave to Baker Ave	35	8/13/2018
Fourth St	Benson Ave to Mountain Ave	40	8/13/2018
Fourth St	Mountain Ave to Baker Ave	35	10/2/2018
Fourth St	Baker Ave to Archibald Ave	45	10/2/2018
Fourth St	Archibald Ave to Etiwanda Ave	55	10/2/2018
Francis St	Benson Ave to Euclid Ave	40	3/21/2013
Francis St	Euclid Ave to Campus Ave	35	3/21/2013
Francis St	Campus Ave to Archibald Ave	45	1/16/2013
Francis St	Metro Wy to Rochester Ave	40	1/7/2013
Francis St	Wineville Ave to Etiwanda Ave	40	1/8/2013
G St	Benson Ave to Grove Ave	35	10/4/2018
G St	Grove Ave to Vineyard Ave	40	8/13/2018
Grove Ave	Eighth St to Mission Blvd	45	1/7/2013
Grove Ave	Mission Blvd to SR-60 Freeway	50	1/16/2013
Grove Ave	SR-60 Freeway to Riverside Dr	45	1/15/2013
Grove Ave	Riverside Dr to Merrill Ave	50	1/15/2013
Guasti Rd	Holt Blvd to Archibald Ave	45	10/2/2018
Guasti Rd	Archibald Ave to Haven Ave	50	10/2/2018
Hamner Ave	Riverside Dr to South City Limits	55	10/4/2018
Haven Ave	Fourth St to Airport Dr	45	3/21/2013
Haven Ave	Airport Dr to Mission Blvd	55	1/9/2013
Haven Ave	Mission Blvd to SR-60 Freeway	50	1/7/2013
Haven Ave	SR-60 Freeway to Ontario Ranch Road	50	4/21/2017
Hellman Ave	Mission Blvd to Philadelphia St	45	3/25/2013
Holt Blvd	Benson Ave to San Antonio Ave	45	3/25/2013
Holt Blvd	San Antonio Ave to Grove Ave	40	1/17/2013
Holt Blvd	Grove Ave to I-10 Freeway	45	1/17/2013
I St	Benson Ave to Fresno St	35	10/4/2018
Inland Empire Blvd	Vineyard Ave to Milliken Ave	45	8/14/2018
Jurupa St	Archibald Ave to Etiwanda Ave	45	1/10/2013
Lytle Creek Loop	North and South loops	30	1/7/2013
Merrill Ave	Euclid Ave to Archibald Ave	50	8/14/2018
Merrill Ave	Archibald Ave to end of Street	35	5/15/2017

Milliken Ave	Fourth St to Jurupa St	50	1/10/2013
Milliken Ave	Jurupa St to Riverside Dr	50	5/15/2017
Mission Blvd	Benson Ave to Euclid Ave	50	8/14/2018
Mission Blvd	Euclid Ave to Grove Ave	45	8/14/2018
Mission Blvd	Grove Ave to Haven Ave	55	10/4/2018
Mission Blvd	Haven Ave to Milliken Ave	55	5/15/2017
Mountain Ave	I-10 Freeway to Mission Blvd	40	1/15/2013
Mountain Ave	Mission Blvd to Philadelphia St	50	1/14/2013
Mountain Ave	Philadelphia St to SR-60 Freeway	40	3/21/2013
Ontario Blvd	Campus Ave to California St	40	1/17/2013
Ontario Mills Cr	Entire Length of Loop	30	1/9/2013
Ontario Mills Pkwy	Milliken Ave to Rochester Ave	40	1/9/2013
Ontario Mills Pkwy	Rochester Ave to Etiwanda Ave	45	1/8/2013
Ontario Ranch Rd	Archibald Ave to Haven Ave	50	4/21/2017
Ontario Ranch Rd	Haven Ave to Hamner Ave	55	4/21/2017
Philadelphia St	Benson Ave to Euclid Ave	45	8/15/2018
Philadelphia St	Euclid Ave to Grove Ave	40	8/15/2018
Philadelphia St	Grove Ave to Mission Blvd	50	8/15/2018
Philadelphia St	Milliken Ave to Etiwanda Ave	45	11/5/2018
Phillips St	Benson Ave to Euclid Ave	40	10/4/2018
Riverside Dr	Euclid Ave to Milliken Ave	50	8/14/2018
Rockefeller Ave	Airport Dr to Jurupa St	40	8/15/2018
San Antonio Ave	I-10 Freeway to Phillips St	35	1/15/2013
San Antonio Ave	Phillips St to South City Limit	45	1/16/2013
Santa Ana St	Carnegie Ave to Rockefeller Ave	35	1/10/2013
Santa Ana St	Wineville Ave to Etiwanda Ave	35	1/8/2013
Schaefer Ave	Euclid Ave to Vineyard Ave	45	8/15/2018
Seventh St	West City Limit to Vineyard Ave	35	1/7/2013
Sixth St	Benson Ave to Grove Ave	35	8/15/2018
Sixth St	Grove Ave to East City Limit	45	8/15/2018
State St	Benson Ave to San Antonio Ave	45	1/15/2013
State St	San Antonio Ave to Campus Ave	35	1/17/2013
Sultana Ave	I-10 Freeway to Philadelphia St	35	10/4/2018
Turner Ave	Fourth St to Inland Empire Blvd	45	8/15/2018
Turner Ave	Arcadian Shore Dr to Ontario Ranch Rd	45	4/21/2017
Vine Ave	Fourth St to Philips St	30	1/15/2013
Vineyard Ave	Eighth St to Fourth St	50	1/7/2013
Vineyard Ave	Fourth St to Airport Dr	45	1/7/2013
Vineyard Ave	Mission Blvd to Philadelphia St	50	1/16/2013
Vineyard Ave	Philadelphia St to Riverside Dr	45	1/16/2013
Walnut St	Fern Ave to Vineyard Ave	45	10/3/2018

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

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of December 2018.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-    duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

# CITY OF ONTARIO

*Agenda Report*  
December 18, 2018

SECTION:  
CONSENT CALENDAR

**SUBJECT: COOPERATIVE AGREEMENT WITH THE CITY OF FONTANA FOR THE CONSTRUCTION OF IMPROVEMENTS AT THE INTERSECTION OF ETIWANDA AVENUE AND AIRPORT DRIVE/SLOVER AVENUE**

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute a Cooperative Agreement (on file with the Records Management Department) with the City of Fontana for the construction of improvements at the intersection of Etiwanda Avenue and Airport Drive/Slover Avenue.

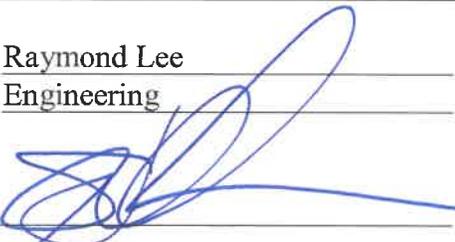
**COUNCIL GOALS:** Operate in a Businesslike Manner  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** The total project cost is \$9,347,628. Based on each agency's jurisdictional percentage, Ontario's share of the project is \$3,346,396, of which 55.6% of the share (\$1,860,596) will be funded by the Measure I Arterial Program. The Adopted FY 2018-19 Operating Budget includes appropriations of \$1,124,188 for this project, which can cover part of the remaining 44.4% of Ontario's share (\$1,485,800). Additional appropriations of \$361,612 from the Old Model Colony Local Adjacent Streets Development Impact Fees is required. If approved, this amount will be included in the next quarterly budget report to the City Council.

**BACKGROUND:** On May 2, 2006, the City Council approved an agreement with the City of Fontana to modify the traffic signal and construct various street improvements at the intersection of Etiwanda Avenue and Airport Drive/Slover Avenue. The scope of the project was expanded because of additional widening and right-of-way acquisition, as well as changes in design and equipment standards. The subject agreement will cover the revised scope and budget of the project and will replace the May 2, 2006, agreement.

The intersection of Etiwanda Avenue and Airport Drive/Slover Avenue has been operating at an unacceptable service level during peak periods. This project will improve the capacity of the

**STAFF MEMBER PRESENTING:** Scott Murphy, AICP, Executive Director, Development Agency

Prepared by: Raymond Lee  
Department: Engineering  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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intersection and overall traffic circulation and will include street widening, traffic signal modifications, as well as the construction of concrete pavement, sidewalk, accessible ramps, signing and striping modifications, retaining wall, storm drain improvements, and rail crossing upgrades (see Exhibit A for project limits).

The City of Fontana is the lead agency responsible for completing all phases of the project, which include project management, environmental study, design, construction, construction management, right-of-way coordination and acquisition, utility relocation, and construction closeout through the warranty period. The traffic signal will continue to be maintained by the City Ontario after project completion, with the City of Fontana sharing 50% of the operating costs.

# EXHIBIT A

## ETIWANDA AVENUE AND AIRPORT DRIVE / SLOVER AVENUE INTERSECTION IMPROVEMENT PROJECT TR-0402



# CITY OF ONTARIO

*Agenda Report*  
December 18, 2018

**SECTION:  
CONSENT CALENDAR**

**SUBJECT: COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR ENDED JUNE 30, 2018**

**RECOMMENDATION:** That the City Council accept the City of Ontario's Comprehensive Annual Financial Report (CAFR) for the fiscal year ending June 30, 2018.

**COUNCIL GOALS: Operate in a Businesslike Manner**

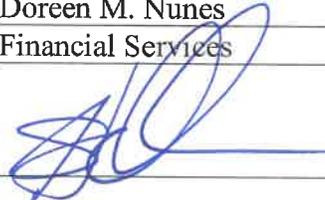
**FISCAL IMPACT:** There is no direct fiscal impact as a result of this action; however, the City's receipt of an unqualified audit report with no material internal control weaknesses or significant deficiencies reported can result in enhanced bond ratings.

**BACKGROUND:** The primary objectives of a financial audit are: (1) to express an opinion on the fairness of the financial statements in conformity with generally accepted accounting principles; and (2) to determine whether the City has complied with applicable legal requirements in obtaining and expending public funds.

The audit for Fiscal Year 2017-18 was performed in accordance with generally accepted auditing standards by the accounting firm of Lance Soll & Lunghard, LLP. These standards are required to obtain reasonable assurances that the general purpose financial statements are free from material misstatements. The opinion given in the Report of the Independent Auditors states that "the general purpose financial statements present fairly, in all material respects, the financial position of the City of Ontario at June 30, 2018 and the results of the City's operations are in accordance with generally accepted accounting principles."

The City of Ontario has received the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association (GFOA) for 29 consecutive years. This year's CAFR has been submitted again to GFOA for award consideration.

**STAFF MEMBER PRESENTING:** Mark Alvarado, Interim Executive Director, Finance

Prepared by: Doreen M. Nunes  
Department: Financial Services  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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Copies of the CAFR are made available to the public for review and reference at the Records Management Department, Ovitt Family Library, Colony Branch Library, and electronically via the City's website.

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
CONSENT CALENDAR

**SUBJECT: A ZONE CHANGE (FILE NO. PZC18-002) TO ESTABLISH A ZONING DESIGNATION OF IG (GENERAL INDUSTRIAL) FOR 2.4 ACRES OF LAND LOCATED WITHIN NORTH LOOP DRIVE, GENERALLY WEST OF ETIWANDA AVENUE AND SOUTH OF THE INTERSTATE 10 FREEWAY**

**RECOMMENDATION:** That the City Council consider and adopt a City-initiated ordinance approving File No. PZC18-002.

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

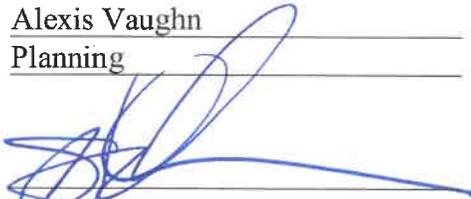
**FISCAL IMPACT:** None.

**BACKGROUND:** On December 4, 2018, the City Council introduced and waived further reading of an ordinance approving the Zone Change. In 2010, The Ontario Plan ("TOP") was adopted which sets forth the land use pattern for the City to achieve its Vision. Subsequently, zoning districts with appropriate land uses were adopted to implement the Vision and create consistency between TOP land use designations and zoning.

The project site is a remnant Caltrans right-of-way property, which was relinquished to the City of Ontario in 1973. The City currently has the property in escrow to be sold to a developer for the future development of a 43,200 square-foot industrial building. The 2.4-acre property does not have an assessor parcel number (APN) and, therefore, the future owner of the property will be required to submit a Certificate of Compliance to create a legal parcel.

Currently, the project site is identified as right-of-way, with no zoning designation. Therefore, a Zone Change is required to establish a zoning designation of IG (General Industrial) to facilitate the future development of the subject property and provide zoning consistency with the surrounding parcels (see Exhibit A: Proposed Zone Change).

**STAFF MEMBER PRESENTING:** Scott Murphy, AICP, Executive Director, Development Agency

Prepared by: Alexis Vaughn  
Department: Planning  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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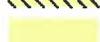
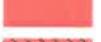
On October 23, 2018, the Planning Commission conducted a public hearing to consider the proposed Zone Change, and voted unanimously (6-0) to recommend that the City Council adopt an Addendum to The Ontario Plan Environmental Impact Report and approve the Zone Change.

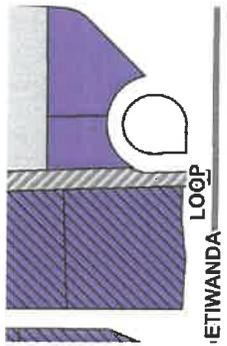
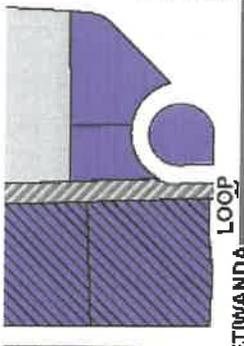
**AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE:** The project site is located within the Airport Influence Area of the Ontario International Airport, and has been found to be consistent with the policies and criteria set forth within the Ontario International Airport Land Use Compatibility Plan. Further, the project site is not located within any safety or noise impact zones for either the Ontario or Chino airports, is not a high terrain zone, and has a maximum allowable building height of 200 feet.

**ENVIRONMENTAL REVIEW:** The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts. The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan (PGPA06-001) Environmental Impact Report (SCH# 2008101140) certified by the City Council on January 27, 2010. The Addendum was prepared pursuant to CEQA, the State CEQA Guidelines, and The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" which provides for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts not previously analyzed in the Environmental Impact Report. All previously-adopted mitigation measures are a condition of project approval and are incorporated herein by reference.

## Exhibit A: Proposed Zone Change

### CURRENT ZONING:

 AR-2, Residential-Agricultural	 PUD, Planned Development Unit	 BP, Business Park	 OS-R, Open Space Recreation
 RE-2, Rural Estate	 MU, Mixed Use 1 - Downtown, 2-East Holt, 11-Francis&Euclid	 IP, Industrial Park	 OS-C, Open Space Cemetery
 RE-4, Residential Estate	 CS, Corner Store	 IL, Light Industrial	 UC, Utilities Corridor
 LDR-5, Low Density Residential	 CN, Neighborhood Commercial	 IG, General Industrial	 SP, Specific Plan
 MDR-11, Low-Medium Density Residential	 CC, Community Commercial	 IH, Heavy Industrial	 SP(AG), Specific Plan w Agricultural Overlay
 MDR-18, Medium Density Residential	 CCS, Convention Center Support	 ONT, Ontario Int'l Airport	 ES, Emergency Shelter Overlay
 MDR-25, Medium-High Density Residential	 OL, Low Intensity Office	 CIV, Civic	 MTC, Multimodal Tran Center Overlay
 HDR-45, High Density Residential	 OH, High Intensity Office	 RC, Rail Corridor	 ICC, Interim Commn Commercial Overlay
 MHP, Mobile Home Park			

Existing Zoning	Assessor Parcel Number(s) Involved	Proposed Zoning
 <p style="text-align: center;">Undesignated</p>	<p style="text-align: center;"><i>The parcel currently does not have a zoning designation or an APN</i></p> <p style="text-align: center;"><i>(1 of 1 properties)</i></p> <p style="text-align: center;">Located within North Loop Circle, west of Etiwanda Avenue and south of the I-10 Freeway</p>	 <p style="text-align: center;">IG (General Industrial)</p>

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PCZ18-002, A ZONE CHANGE TO ESTABLISH A ZONE OF IG (GENERAL INDUSTRIAL) ON A LOT TOTALING 2.4 ACRES OF LAND THAT CURRENTLY DOES NOT HAVE A ZONING DESIGNATION OR AN APN, TO BRING PROPERTY ZONING INTO CONSISTENCY WITH THE POLICY PLAN (GENERAL PLAN) LAND USE PLAN, AFFECTING PROPERTY LOCATED WITHIN NORTH LOOP DRIVE, GENERALLY WEST OF ETIWANDA AVENUE AND SOUTH OF THE INTERSTATE 10 FREEWAY, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: N/A. (SEE ATTACHMENT A) (PART OF CYCLE 4 FOR THE 2018 CALENDAR YEAR).

WHEREAS, the City of Ontario ("Applicant") has filed an Application for the approval of a Zone Change, File No. PZC18-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 2.4 acres of land surrounded by North Loop Drive, generally located west of Etiwanda Avenue and south of the I-10 Freeway, and is presently vacant; and

WHEREAS, the property to the north of the Project site is the Interstate 10 Freeway. The property to the east is within the City of Fontana, and is currently vacant. The property to the south is the Southern Pacific Rail Line. The property to the west is within the IG (General Industrial) zoning district, and is developed with industrial buildings; and

WHEREAS, the Project was filed in conjunction with a General Plan Amendment (PGPA18-005), and that the proposed Zone Change will bring the parcel into consistency with the Vision of The Ontario Plan (TOP) and the Policy Plan (General Plan) component of TOP; and

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

WHEREAS, 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 Project is 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 ONT 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 23, 2018, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting unanimously (6-0) to issue Resolution No. PC18-095 recommending the City Council approve the Application; and

WHEREAS, as the first action on the Project, on December 4, 2018, the City Council approved a Resolution adopting an Initial Study/Addendum to the Environmental Impact Report (SCH #2008101140) certified by City Council on January 27, 2010, for File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts, and all previously-adopted mitigation measures were incorporated into the Project by reference; and

WHEREAS, on December 4, 2018, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

**SECTION 1. *Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the 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 environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report — SCH# 2008101140 ("Certified EIR"), certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001; and

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

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

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

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

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

**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 environmental impact report is not required for the Project, as the Project:

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

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

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

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

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

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

**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 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 the project site is not located within any safety or noise impact zones for either the Ontario or Chino airports, is not a high terrain zone, and has a maximum allowable building height of 200 feet, 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 4. 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 Sections 1 through 3, above, the City Council hereby concludes as follows:

(1) The proposed Zone Change is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities:

**Policy LU2-1 Land Use Decisions.** We minimize adverse impacts on adjacent properties when considering land use and zoning requests. The proposed Zone Change closely coordinates with, land uses, zoning designations and land use designations in the surrounding area which will not increase adverse impacts on adjacent properties.

**Goal LU3** Staff, regulations, and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision. The proposed land use designation and zone change applications will provide consistency between the project site and the surrounding area, while maintaining a logical land use pattern in and around the affected area. Further, the applications will allow for the development of the site to occur.

(2) The proposed Zone Change would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The proposed Zone Change will be closely coordinated with the surrounding area. Further, future development will be required to meet Ontario Development Code and Municipal Code standards.

(3) The proposed Zone Change will not adversely affect the harmonious relationship with adjacent properties and land uses, in that it has been coordinated. The proposed Zone Change will be closely coordinated to allow development to occur which shall be consistent with the surrounding neighborhood in terms of scale, massing, and industrial land uses. Further, future development will be required to meet Ontario Development Code and Municipal Code standards.

(4) The subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development. The subject site is surrounded by developed land, including industrial uses and transportation routes. The project site is large enough to be developed with a building suitable for general industrial purposes, and will be developed to be consistent with existing industrial buildings within the project vicinity.

**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 Zone Change, as depicted in Attachment A of this Ordinance.

**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 \_\_\_\_\_ 2019.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, 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 December 18, 2018 and adopted at the regular meeting held \_\_\_\_\_, 2019 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 \_\_\_\_\_, 2019 and that Summaries of the Ordinance were published on \_\_\_\_\_ and \_\_\_\_\_, in the Inland Valley Daily Bulletin newspaper.

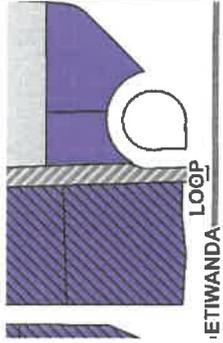
\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

## ATTACHMENT A: Proposed Zone Change

### CURRENT ZONING:

	AR-2, Residential-Agricultural		PUD, Planned Unit Development		BP, Business Park		OS-R, Open Space Recreation
	RE-2, Rural Estate		MU, Mixed Use 1 - Downtown, 2-East Holt, 11-Francis&Euclid		IP, Industrial Park		OS-C, Open Space Cemetery
	RE-4, Residential Estate		CS, Corner Store		IL, Light Industrial		UC, Utilities Corridor
	LDR-5, Low Density Residential		CN, Neighborhood Commercial		IG, General Industrial		SP, Specific Plan
	MDR-11, Low-Medium Density Residential		CC, Community Commercial		IH, Heavy Industrial		SP(AG), Specific Plan w Agricultural Overlay
	MDR-18, Medium Density Residential		CCS, Convention Center Support		ONT, Ontario Int'l Airport		ES, Emergency Shelter Overlay
	MDR-25, Medium-High Density Residential		OL, Low Intensity Office		CIV, Civic		MTC, Multimodal Tran Center Overlay
	HDR-45, High Density Residential		OH, High Intensity Office		RC, Rail Corridor		ICC, Interim Commun Commercial Overlay
	MHP, Mobile Home Park						

Existing Zoning	Assessor Parcel Number(s) Involved	Proposed Zoning
 <p style="text-align: center;">Undesignated</p>	<p style="text-align: center;"><i>The parcel currently does not have a zoning designation or an APN</i></p> <p style="text-align: center;"><i>(1 of 1 properties)</i></p> <p style="text-align: center;">Located within North Loop Circle, west of Etiwanda Avenue and south of the I-10 Freeway</p>	 <p style="text-align: center;">IG (General Industrial)</p>

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
CONSENT CALENDAR

**SUBJECT: CONSTRUCTION CONTRACT FOR THE POLICE PARKING LOT PROJECT**

**RECOMMENDATION:** That the City Council award Construction Contract No. 1033 to Onyx Paving Company, Inc. of Anaheim California, for the Police Parking Lot Project in the amount of \$404,000 plus a 10% contingency (\$40,400) for a total amount of \$444,400; authorize the City Manager to execute said contract (on file with the Records Management Department), authorize additional appropriations of \$100,775 from the General Fund, and authorize the filing of the notice of completion at the conclusion of all construction activities related to the project.

**COUNCIL GOALS: Maintain the Current High Level of Public Safety**

**Operate in a Businesslike Manner**

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

**FISCAL IMPACT:** The total estimated cost for the Police Parking Lot Project including contingency is \$444,400. The Adopted FY2018-19 Operating Budget includes project funding of \$343,625. Staff recommends additional appropriations of \$100,775 from the General Fund to cover the remaining project costs and contingencies.

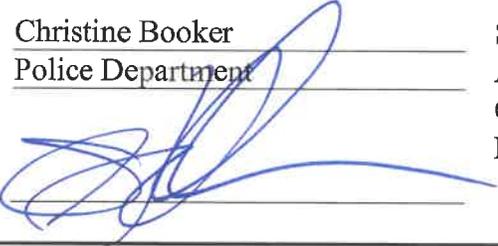
**BACKGROUND:** The proposed project involves significant renovations to the employee parking lot at the Police Headquarters Facility. The project includes: remove existing tipuana tipu trees, remove and replace asphalt pavement and concrete curb, asphalt concrete overlay, remove and replace irrigation, crack filling and slurry sealing, and new tree installations.

On November 30, 2018, eight bids were received for the Police Parking Lot Project. A summary of the base bid results follows:

Vendor	Location	Base Bid Amount
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**STAFF MEMBER PRESENTING:** Derek Williams, Chief of Police

Prepared by: Christine Booker  
Department: Police Department

City Manager  
Approval: 

Submitted to Council/O.H.A. 12/18/2018

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

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

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

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Onyx Paving Company, Inc.	Anaheim, CA	\$404,000
DD Systems, Inc.	Glendora, CA	\$426,577
Horizons Construction Company International Inc.	Orange, CA	\$527,617
LCPaving & Sealing, Inc.	San Marcos, CA	\$566,080
All American Asphalt	Corona, CA	\$599,788
LCC3 Construction Services, Inc.	Rancho Cucamonga, CA	\$761,011
Golden Gate Steel, Inc.	Norwalk, CA	\$772,351
Aramexx Construction	Claremont, CA	\$1,068,635

Onyx Paving Company, Inc., located in Anaheim, CA, submitted the lowest responsive base bid and has performed similar projects in the past.

If approved, construction will commence on January 15, 2019, and is anticipated to be complete in May 2019.

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
CONSENT CALENDAR

**SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR PRESORTING AND MAILING SERVICES**

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute a one-year professional services agreement (on file with the Records Management Department) with Inland Presort & Mailing Services, of Redlands, California, with an estimated annual expenditure of \$275,000; and authorize the City Manager to extend the agreement for one additional year with the same terms and conditions.

**COUNCIL GOALS:** Operate in a Businesslike Manner

**FISCAL IMPACT:** The Adopted Fiscal Year 2018-19 Operating Budget includes appropriations of \$273,000 in the Revenue Services Department to cover the majority of the City's recurring mailing service needs—utility billing/collections, public notices, and general mailers. Additional appropriations are included in capital project budgets for mailings specific to those projects. Funding for the option year, if the term is extended, will be included in the respective years' proposed budgets for City Council approval.

**BACKGROUND:** The City utilizes a third-party mail processing house to process and sort all city mail, which is less expensive and labor intensive than dealing directly with the U.S. Postal Service. Routinely, the City evaluates performance, costs, and services provided by our various contractors to help ensure operations are efficient, effective, and meet performance expectations. As a result an recent evaluation of presorting and mailing services, staff recommends a change in service providers to now utilize Inland Presort & Mailing.

Inland Presort & Mailing is a family-owned mail house located in Redlands, that provides processing for the County of San Bernardino and other nearby cities. The company employs their own drivers which will enhance the level of service of pick-ups and deliveries as compared to the City's current provider. Additionally, Inland Presort and Mailing Services has agreed to offer Ontario the same postage

**STAFF MEMBER PRESENTING:** Mark Alvarado, Interim Executive Director, Finance

Prepared by: Delilah Patterson  
Department: Revenue Services  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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discount/rates as our current provider; and hold those constant throughout the initial term of the agreement as well as the option year.

Inland Presort and Mailing Services will require an initial deposit of \$15,000 to start service beginning January 2019. The City has the option of adding other services such as: standard mail sorting, inserting, folding, addressing, tabbing, etc. on an as-needed basis; and Inland Presort and Mailing Services would propose appropriate fees for those individual services on a per job invoiced basis.

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
PUBLIC HEARINGS

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE AMENDING SECTION 3-1.701 OF ARTICLE 7 OF CHAPTER 1 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE AND ADDING CHAPTER 31 TO TITLE 5 OF THE ONTARIO MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946**

**RECOMMENDATION:** That the City Council read by title only, waive further reading, and adopt an urgency ordinance amending Ontario Municipal Code Section 3-1.701 and adding Chapter 31 to Title 5 of the Ontario Municipal Code, imposing regulations upon sidewalk vending in compliance with Senate Bill 946.

**COUNCIL GOALS:** Maintain the Current High Level of Public Safety  
Operate in a Businesslike Manner  
Focus Resources in Ontario's Commercial and Residential Neighborhoods

**FISCAL IMPACT:** None.

**BACKGROUND:** On September 17, 2018, the Governor signed legislation, Senate Bill 946, which creates specific parameters for local regulation of sidewalk vending. Under this new legislation, effective January 1, 2019, local governments may not impose criminal sanctions for sidewalk vending, but may implement time, place, and manner restrictions specific to sidewalk vending.

The City currently regulates sidewalk vending via Ontario Municipal Code (OMC) Section 3-1.701. That section generically regulates solicitation and canvassing within the City; violations carry a potential penalty of an infraction or a misdemeanor. Because it generically regulates soliciting and canvassing, the section does not utilize definitions which specifically differentiate sidewalk vending from other forms of solicitation. As such, regulation of sidewalk vending through this section could be challenged as noncompliant with the terms of Senate Bill 946. Moreover, this section of the OMC is not sufficient

**STAFF MEMBER PRESENTING:** Scott Ochoa, City Manager

Prepared by: Scott Ochoa  
Department: Administrative Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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to address public safety hazards created by congregations of sidewalk vendors around the entrances/exits to public event venues such as the Ontario Convention Center or the Citizens Business Bank Arena.

During a November concert event, an estimated 30 sidewalk vendors congregated outside of the various entrances to the Citizens Business Bank Arena. The vendors created ingress-egress issues for patrons and provided insight into the public safety risks posed by sidewalk vending if regulations are not adopted. As one of the premier venues in Southern California, the Citizens Business Bank Arena will host several large events over the coming months; similar congregations of sidewalk vendors would be permitted both under the City's current regulation as well as under Senate Bill 946 if action is not taken.

In order to address the current public health and safety risk of unregulated sidewalk vending, as well as when Senate Bill 946 becomes effective on January 1, 2019, staff recommends that the City Council enact an urgency ordinance, effective immediately. The attached ordinance would regulate sidewalk vending in the City by prohibiting, most notably:

- all sidewalk vending within five hundred (500) feet of the Citizens Business Bank Arena, the Ontario Convention Center, and the Ontario Town Square on event days;
- all sidewalk vending within five hundred (500) feet of the Ontario International Airport;
- all sidewalk vending within five hundred (500) feet of any school, Farmers' Market, Swap Meet, filming location, or event held pursuant to a Temporary Event Permit;
- stationary sidewalk vending in residential neighborhoods;
- roaming sidewalk vending in residential neighborhoods outside of the hours of 7:00 a.m. and 6:00 p.m. weekdays and 9:00 a.m. and 5:00 p.m. on the weekends;
- all sidewalk vending within specified distances of fire hydrants, street lights, utility boxes, parking meters, and entrance ways to any building, store, theater, movie house, house of worship, or place of public assembly; and
- any sidewalk vending that violates Americans with Disabilities Act requirements for sidewalk accessibility.

Under California Government Code 36937, the City Council may issue an urgency ordinance only by a 4/5 vote of the City Council with a finding that there is a current and immediate threat to the public health, safety, or welfare. Unregulated sidewalk vending is a current and immediate threat to the public health and safety as it poses a unique risk to traffic flow, pedestrian safety, mobility, unsanitary conditions involving food preparation and disposal, risks to children, and consumer protection.

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

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 3-1.701 OF ARTICLE 7 OF CHAPTER 1 OF TITLE 3 OF THE ONTARIO MUNICIPAL CODE AND ADDING CHAPTER 31 TO TITLE 5 OF THE ONTARIO MUNICIPAL CODE, IMPOSING REGULATIONS ON SIDEWALK VENDING IN COMPLIANCE WITH SENATE BILL 946.

WHEREAS, the City of Ontario, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, Article XI, section 7 of the California Constitution grants the City broad discretionary power to "make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws"; and

WHEREAS, in 2018, the California Legislature passed SB 946 which prohibits cities from regulating sidewalk vendors, except in accordance with the provisions of SB 946; and

WHEREAS, SB 946 applies to both charter and general law cities; and

WHEREAS, SB 946 authorizes the implementation of regulations that are directly related to objective health, safety, or welfare concerns, and that do not restrict sidewalk vendors to operate only in a designated neighborhood or area, except as specified; and

WHEREAS, the standards imposed on sidewalk vendors requiring a minimum path of accessible travel are necessary to comply with the Americans with Disabilities Act and maintain minimum safe access along public sidewalks; and

WHEREAS, standards for maintaining access to building entrances, and not blocking driveways, parking areas and building storefront windows are necessary to guard the health and safety of patrons, drivers, vendors and existing business owners and promote law enforcement practices that allow the City's Police personnel to observe within buildings; and

WHEREAS, the City Council finds and determines that the installation, repair, maintenance, and removal of encroachments in the public way must be regulated in order to protect the public health, safety, and welfare and to provide for the orderly administration and maintenance of the public way for the benefit of the community, while at the same time allowing reasonable accommodation and cooperative flexibility for providing necessary utility and other convenience services to the community; and

WHEREAS, the City Council finds that public and private persons who install encroachments in the public way bear a responsibility to help preserve the public way and to contribute to the administrative costs incurred by the community because of such encroachments; and

WHEREAS, the City Council finds that, unless properly regulated, sidewalk vending poses a unique risk to the health, safety, and welfare of the public, including, but not limited to, impacts to traffic, pedestrian safety, mobility, unsanitary conditions involving food preparation and disposal, risks to children, and consumer protection; and

WHEREAS, vending within five hundred (500) feet of popular tourist attractions, schools, the Ontario International Airport, and concert and sports venues on event days impacts pedestrian, tourist, and vendor safety due to overcrowding on sidewalks, which results in pedestrians walking in the street and along the sidewalk to keep moving forward. These venues also experience a high amount of traffic, affecting the safety of pedestrians and motorists, due to a high concentration of visitors at one time; and

WHEREAS, the inherent nature of sidewalk vending and the ability of such vendors to be located on private property and public streets and move quickly from place to place in the community, including near parks, schools, and other places frequented by children, warrants imposing certain regulatory measures to protect the health, safety, and welfare of the community; and

WHEREAS, SB 946 continues to authorize cities to prohibit sidewalk vendors in areas located within the immediate vicinity of a permitted certified farmers' market and a permitted swap meet, as specified, and to restrict or prohibit sidewalk vendors within the immediate vicinity of an area designated for a temporary special permit issued by a city; and

WHEREAS, vending in a manner that creates a public nuisance or constitutes a danger to the public constitutes an objective harm to the health, safety, and welfare of the City's residents; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Urgency Ordinance as if fully set forth herein.

In accordance with California Government Code, Section 36937 and in order to protect the public health, safety and welfare, the City Council also makes the following findings in support of the urgent nature of this Ordinance:

A. The City Council finds that this Urgency Ordinance is enacted in order to protect the public health, safety and welfare by adopting regulations that would become effective prior to January 1, 2019, to address the requirements of SB 946. Specifically, this Urgency Ordinance mitigates the impacts and threats to the public peace, health, and safety by creating a regulatory mechanism to assure that sidewalk vending does not pose a risk to the health, safety, and welfare of the public, including, but not limited to, impacts to traffic, pedestrian safety, mobility, unsanitary conditions involving food preparation and disposal, risks to children, and consumer protection.

B. The City Council also finds that this Urgency Ordinance is necessary to promote the immediate preservation of the public peace, health and safety by establishing a regulatory mechanism for street vending that can be in place prior to January 1, 2019. Otherwise street vending becomes an unregulated permitted activity.

C. Finally, the City Council further finds that the regulations contained in this Urgency Ordinance are reasonable and beneficial and assure that a lawful regulatory program is in place prior to January 1, 2019.

SECTION 2. Section 3-1.701 of Article 7 of Chapter 1 of Title 3 of the Ontario Municipal Code is hereby amended to read as follows:

“Sec. 3-1.701. Defined.

For the purposes of this article, “solicitor” or “canvasser” shall mean any individual, whether a resident of the City or not, using telephone service or other communication, or traveling by foot, wagon, automobile, motor truck, or any other type of conveyance from place to place, from house to house, or from street to street taking, or attempting to take, orders for the sale of goods, wares, merchandise, or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not.

“Solicitor” or “canvasser” shall include any person who, for himself or for another person, firm, or corporation, hires, leases, uses, or occupies any building, structure, tent, vehicle, hotel room, lodging house, apartment, shop, or any other place in the City for the sole purpose of exhibiting samples and taking orders for future delivery.

Such definition shall not include solicitors or canvassers taking orders or displaying merchandise exclusively from a public sidewalk or public pedestrian path in compliance with Chapter 31 of Title 5 of this Municipal Code.”

SECTION 3. Chapter 31 is hereby added to Title 5 of the Ontario Municipal Code to read as follows:

#### Chapter 31 – SIDEWALK VENDING.

Sec. 5-31.01. Purpose.

The City finds that the vending of prepared or pre-packaged foods, goods, and/or wares at semi-permanent locations on public sidewalks and rights-of-way may pose unsafe conditions and special dangers to the public health, safety, and welfare of residents and visitors. The purpose of this Chapter is to implement regulations on both roaming and stationary sidewalk vending that protect the public health, safety, and welfare of the community while complying with the requirements of general state law, as amended from time to time, to promote safe vending practices, prevent safety, traffic, and health hazards, and preserve the public peace, safety, and welfare of the community.

Sec. 5-31.02. Definitions.

For purposes of this Chapter, the following definitions apply:

A. "Certified Farmers' Market" means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and any regulations adopted pursuant to that chapter.

B. "City" means the City of Ontario.

C. "Park" means a public park owned by a governmental entity.

D. "Roaming sidewalk vendor or vending" means a sidewalk vendor who moves from place to place and stops only to complete a transaction.

E. "Sidewalk vendor or vending" means a person who sells, offers to sell, operates, engages in, or carries on a food or merchandise vending business from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path.

F. "Swap Meet" means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that article.

G. "Temporary Event Permit" means a permit issued by the City of Ontario for temporary uses (i.e. special event permits, temporary use permits, film permits, or park reservations).

H. "Downtown" means non-residential areas bounded to the west by N. Palm Avenue, to the north by G Street, to the east by N. Lemon Avenue, and to the south by Emporia Street.

I. "Event Day" means the calendar day of any concert, trade show, conference, sporting event, or any other event potentially attracting large numbers of persons and vehicles to the venue.

Sec. 5-31.03. Stationary Sidewalk Vending Locations and Standards.

A. Stationary sidewalk vendors shall be prohibited from operating or establishing in any residential zone of the City.

B. Stationary sidewalk vendors may operate in non-residential zones of the City, including mixed use zones, provided they meet the following:

1. The sidewalk vendor can set up vending operations while still leaving a minimum of thirty-six inches (36") of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and

2. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
3. The sidewalk vendor location does not block entrances to buildings, driveways, parking spaces or building windows; and
4. No vending shall occur within ten (10) feet of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp, fire station driveway, or police station driveway; and
5. No tables, chairs, fences, shade structures, other site furniture, or any freestanding signs shall be permitted in conjunction with the vendors' vending activities; and
6. The vendor shall not attach or use any water lines, electrical lines, or gas lines during vending operations; and
7. Exterior storage or display of refuse, equipment, materials, goods, wares, or merchandise associated with the vendor is prohibited; and
8. No vending shall occur within five hundred (500) feet of a Certified Farmers' Market, a Swap Meet, construction-related street or lane closure, filming location, the Ontario International Airport, or an event held pursuant to a Temporary Event Permit; and
9. No vending shall occur within five hundred (500) feet of the City-owned arena located at 4000 East Ontario Center Parkway, Ontario, CA 91764, the Ontario Convention Center, or Ontario Town Square on event days; and
10. No vending shall occur in Downtown commercial areas where there is a likelihood of overcrowding on the sidewalk or overcrowding of parking, such as, but not limited to with the potential of causing pedestrian and traffic safety issues; and
11. No vending shall occur within a corner cutoff area. A corner cutoff area is that area at all intersecting and intercepting streets or highways. The cutoff line shall be in a horizontal plane, making an angle of 45 degrees with the side, front, or rear property line, as the case may be. It shall pass through the points located on both sides and front or rear property lines at a distance of thirty (30) feet from the intersection of such lines at the corner of a street or highway; and
12. No vending shall occur within five hundred (500) feet of any school; any postsecondary educational facility attended by secondary pupils; or any private kindergarten, elementary, or secondary school facility; and
13. No vending shall occur within three (3) feet of any street lights, edges of tree wells, parking meters, or above-ground utility structures; and
14. No vending shall occur within two (2) feet of any existing subsurface utility box, valve, or vault; and
15. No vending shall occur within twenty (20) feet of another vendor; and
16. No vending shall occur within three (3) feet of bus stop locations, red curbs, or at locations where there are existing above-ground

- amenities such as newsstands or street furniture, including but not limited to benches and bike racks; and
17. No vending shall occur in public streets, roadways, medians, pedestrian islands, parking lots, alleys, or bikeways; and
  18. No vending shall occur within twenty (20) feet of the entrance way to any building, store, theater, movie house, house of worship, or place of public assembly.

Sec. 5-31.04. Sidewalk Vending in Parks.

A. Sidewalk vending of food or merchandise by roaming or stationary vendors shall be prohibited in any City Park with a concession stand operated by a vendor under exclusive contract with the City selling similar food or merchandise.

B. Sidewalk vendors may operate in Parks provided they meet the following:

1. For stationary sidewalk vending, the sidewalk vendor can set up vending operations while still leaving a minimum of thirty-six inches (36") of accessible path of travel, without obstruction, along the public sidewalk or public pathway; and
2. The sidewalk vendor shall cease operations one (1) hour prior to the close of the park; and
3. The sidewalk vendor maintains the vending area in a clean, orderly, and sanitary condition; and
4. The sidewalk vendor location does not block entrances to buildings, driveways, parking spaces, or building windows; and
5. No vending shall occur within the immediate vicinity of an event held pursuant to a Temporary Event Permit; and
6. No vending shall occur within a corner cutoff area. A corner cutoff area is that area at all intersecting and intercepting streets or highways. The cutoff line shall be in a horizontal plane, making an angle of 45 degrees with the side, front, or rear property line, as the case may be. It shall pass through the points located on both sides and front or rear property lines at a distance of thirty (30) feet from the intersection of such lines at the corner of a street or highway; and
7. The sidewalk vendor does not cause an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park or necessary to endure the public's use and enjoyment of natural resources and recreational opportunities or regulations directly related to objective health, safety or wellness concerns; and
8. No vending shall occur in public streets, roadways, medians, pedestrian islands, parking lots, alleys, or bikeways.

Sec. 5-31.05.       Roaming Sidewalk Vending.

A.       Roaming sidewalk vendors shall meet the following:

1.       Sidewalk vending hours for residential zones shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. weekdays and 9:00 a.m. and 5:00 p.m. on the weekends; and
2.       The sidewalk vendor maintains their temporary vending area in a clean, orderly, and sanitary condition; and
3.       The sidewalk vendor does not block entrances to buildings, driveways, parking spaces, or building windows; and
4.       The sidewalk vendor does not conduct sales from a public street; and
5.       No vending shall occur within a corner cutoff area. A corner cutoff area is that area at all intersecting and intercepting streets or highways. The cutoff line shall be in a horizontal plane, making an angle of 45 degrees with the side, front, or rear property line, as the case may be. It shall pass through the points located on both sides and front or rear property lines at a distance of thirty (30) feet from the intersection of such lines at the corner of a street or highway; and
6.       No vending shall occur within five hundred (500) feet of a Certified Farmers' Market, a Swap Meet, construction-related street or lane closure, filming location, the Ontario International Airport, or an event held pursuant to a Temporary Event Permit; and
7.       No vending shall occur within five hundred (500) feet of the City-owned arena located at 4000 East Ontario Center Parkway, Ontario, CA 91764, the Ontario Convention Center, or Ontario Town Square on event days; and
8.       No vending shall occur in Downtown commercial areas where there is a likelihood of overcrowding on the sidewalk or overcrowding of parking areas, with the potential of causing pedestrian and traffic safety issues; and
9.       No vending shall occur within five hundred (500) feet of any school; any postsecondary educational facility attended by secondary pupils; or any private kindergarten, elementary, or secondary school facility; and
10.      No vending shall occur within three (3) feet of any street lights, edges of tree wells, parking meters, or above-ground utility structures; and
11.      No vending shall occur within two (2) feet of any existing subsurface utility box, valve, or vault; and
12.      No vending shall occur within twenty (20) feet of another vendor; and
13.      No vending shall occur within three (3) feet of bus stop locations, red curbs, or at locations where there are existing above-ground amenities such as newsstands or street furniture, including but not limited to benches and bike racks; and

14. No vending shall occur in public streets, roadways, medians, pedestrian islands, parking lots, alleys, or bikeways; and
15. No vending shall occur within twenty (20) feet of the entrance way to any building, store, theater, movie house, house of worship, or place of public assembly.

Sec. 5-31.06.Penalties.

A. It is unlawful for any person to violate any provision or fail to comply with any requirements of this Chapter. A violation of this Chapter shall be punished by:

1. An administrative fine not exceeding \$100 for a first violation.
2. An administrative fine not exceeding \$200 for a second violation within one (1) year of the first violation.
3. An administrative fine not exceeding \$500 for each additional violation within one (1) year of the first violation.

B. The proceeds of any administrative fines assessed pursuant to this Chapter shall be deposited in the treasury of the City.

C. Failure to pay an administrative fine assessed under this Chapter shall not be punishable as an infraction or misdemeanor. Additional fines, fees, assessments, or any other financial conditions beyond those authorized in this Chapter shall not be assessed.

D. Any violation of this Chapter shall not be punishable as an infraction or misdemeanor, and any person alleged to have violated any provisions of this Chapter shall not be subject to arrest except when otherwise permitted under law.

E. When assessing an administrative fine pursuant to this Chapter, the adjudicator shall take into consideration the person's ability to pay the fine. The City shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

1. If the person meets the criteria described in subdivision (a) or (b) of Government Code section 68632, the City shall accept, in full satisfaction, twenty (20) percent of the administrative fine imposed pursuant to this Chapter.
2. The City may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition.

F. A person who is currently serving, or who completed, a sentence, or who is subject to a fine, for a conviction of a misdemeanor or infraction for sidewalk vending, whether by trial or by open or negotiated plea, who would not have been guilty of that offense under SB 946 had SB 946 been in effect at the time of the offense, may petition

for dismissal of the sentence, fine, or conviction before the trial court that entered the judgment of conviction in his or her case.

G. Nothing contained herein shall be construed to impede the City's or County's ability to enforce County Health Department codes and regulations."

SECTION 4. 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 City Council of the City of Ontario hereby declares that it 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 5. This Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. 14 Cal. Code Regs. § 15378(a). Further, this Ordinance is exempt from CEQA as there is no possibility that this Ordinance or its implementation would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3). The City Clerk shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

SECTION 6. Effective Date. This Urgency Ordinance was adopted by the necessary four-fifths vote of the members of the City Council pursuant to California Government Code Sections 36934 and 36937, and shall take effect immediately upon passage.

SECTION 7. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City.

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of December 2018.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Urgency Ordinance No. \_\_\_\_\_ was duly introduced and adopted at a regular meeting of the City Council of the City of Ontario held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

# CITY OF ONTARIO

*Agenda Report*  
December 18, 2018

**SECTION:  
PUBLIC HEARINGS**

**SUBJECT: A PUBLIC HEARING TO CONSIDER RESOLUTIONS REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES); INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES; AND DISSOLUTION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 11 (ESPERANZA I)**

**RECOMMENDATION:** That the City Council:

- (A) Adopt a resolution establishing Community Facilities District No. 44 (Esperanza Services), authorizing the levy of special taxes within the community facilities district, and establishing an appropriations limit for the community facilities district;
- (B) Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 44 (Esperanza Services);
- (C) Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien;
- (D) Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 44 (Esperanza Services); and
- (E) Introduce and waive further reading of an ordinance dissolving City of Ontario Community Facilities District No. 11 (Esperanza I).

**COUNCIL GOALS: Operate in a Businesslike Manner**

**Focus Resources in Ontario's Commercial and Residential Neighborhoods**

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**STAFF MEMBER PRESENTING:** Mark Alvarado, Interim Executive Director, Finance

Prepared by: Bob Chandler  
Department: Management Services  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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**FISCAL IMPACT:** The use of Mello-Roos financing in the Esperanza project is projected to generate approximately \$1,045,000 per year, at build out, to fund City services. As proposed, the maximum annual tax rate on each of the project's 646 single-family detached units is \$1,622. The use of Mello-Roos financing is critical in achieving the City Council's goal to "Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch." The use of Mello-Roos financing for the Esperanza development will not generate funds for facilities, and bonds will not be issued as part of this formation. The CFD is being formed pursuant to the provisions of the landowners' development agreements and the First Amended and Restated Construction Agreement between the City and NMC Builders, LLC.

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

On October 16, 2007, the City Council adopted Resolution of Formation No. 2007-126, and associated resolutions, establishing Community Facilities District No. 11 (Esperanza I) for the Esperanza project. Subsequently, in 2018, the new landowners requested the dissolution of Community Facilities District No. 11 (Esperanza I) in order to combine the units in that CFD with an additional 357 detached units to form a single CFD for an expanded area of development. The process of combining the units consists of forming a new district and dissolving the existing district. Accordingly, the existing Community Facilities District No. 11 (Esperanza I) will be dissolved upon the successful formation of Community Facilities District No. 44 (Esperanza Services). On November 6, 2018, the City Council approved Resolution No. 2018-148, a Resolution of Intention, to establish City of Ontario Community Facilities District No. 44 (Esperanza Services) and to authorize the levy of special taxes within the district. The Esperanza project addresses the development of approximately 133 gross acres located north of Bellegrave Avenue, south of Eucalyptus Avenue, east of Mill Creek Avenue, and west of Hamner Avenue. At build-out, the development is projected to include 646 single-family detached units.

Included, as part of the Resolution of Intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 44 (Esperanza Services). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos local goals and policies, and City staff have discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners. The Resolution of Intention set the public hearing on the establishment of the community facilities district for December 18, 2018. In accordance with requirements of the resolution, the City Clerk has published a notice of the time and place of this hearing pursuant to Section 53322 of the California Government Code at least seven days before the hearing. Additionally, the City gave notice of the time and place of the meeting to each registered voter and to each landowner within the district's boundaries at least fifteen days before the hearing, and the district boundary map was recorded on November 13, 2018. The election will be held immediately after the close of the public hearing in order for the City Council to be presented with the results of the election during the meeting. The City Council may then adopt a resolution declaring the results of the election after receiving a statement from the City Clerk as to the canvass of ballots.

Attached are three resolutions and two ordinances. The first resolution establishes the community facilities district, with the rate and method of apportionment of special taxes, and authorizes the levy of special taxes within the community facilities district. The second resolution calls for a special landowner election to be held on December 18, 2018. The third resolution declares the results of the election and includes a statement from the City Clerk as to the canvass of ballots and directs the recording of the Notice of Special Tax Lien. The first ordinance authorizes the levying of special taxes, and the second ordinance authorizes the dissolution of City of Ontario Community Facilities District No. 11 (Esperanza Services). (Community Facilities District No. 11 is being replaced by the formation of Community Facilities District No. 44.) As noted, the issuance of bonds is not being contemplated for this project, so there is no resolution to issue bonds as part of this formation.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT AND ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE COMMUNITY FACILITIES DISTRICT.

WHEREAS, on November 6, 2018, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 44 (Esperanza Services) and to Authorize the Levy of Special Taxes" (the "Resolution of Intention"), stating its intention to establish a community facilities district (the "Community Facilities District") proposed to be named City of Ontario Community Facilities District No. 44 (Esperanza Services), to authorize the levy of special taxes within the Community Facilities District to finance certain services and setting the date for a public hearing to be held on the establishment of the Community Facilities District; and

WHEREAS, pursuant to the Resolution of Intention, notice of said public hearing was published in the *Inland Valley Daily Bulletin*, a newspaper of general circulation published in the area of the Community Facilities District, in accordance with the Act; and

WHEREAS, on this date, the City Council opened, conducted and closed said public hearing; and

WHEREAS, pursuant to the Resolution of Intention, each officer of the City who is or will be responsible for providing one or more of the proposed types of services was directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the services by type that will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing such services, and such officers were also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid; and

WHEREAS, said report was so filed with the City Council and made a part of the record of said public hearing; and

WHEREAS, at the hearing, the testimony of all persons for or against the establishment of the Community Facilities District, the extent of the Community Facilities District and the furnishing of the specified types of services was heard; and

WHEREAS, written protests against the establishment of the Community Facilities District, the furnishing of any specified type or types of services within the Community Facilities District or the levying of any specified special tax were not made or filed at or before said hearing by 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the Community Facilities District, or the owners of one-half or more of the area of land in the territory proposed to be included in the Community Facilities District and not exempt from the special tax; and

WHEREAS, there has been filed with the City Clerk of the City a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of November 20, 2018, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the proposed Community Facilities District for each of the 90 days preceding the close of said public hearing;

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The Community Facilities District is hereby established pursuant to the Act.

SECTION 3. The Community Facilities District is hereby named "City of Ontario Community Facilities District No. 44 (Esperanza Services)."

SECTION 4. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit A hereto. The incidental expenses proposed to be incurred are described under the caption "Incidental Expenses" on Exhibit A hereto. No facilities are proposed to be financed by the Community Facilities District.

SECTION 5. The proposed special tax to be levied within the Community Facilities District has not been precluded by majority protest pursuant to Section 53324 of the Act.

SECTION 6. Except where funds are otherwise available, a special tax sufficient to pay for all Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District, will be annually levied within the Community Facilities District. The rate and method of apportionment of the special tax (the "Rate and Method"), in sufficient detail to allow each landowner within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is described in Exhibit B attached hereto, which is by this reference incorporated herein. The obligation to pay the special tax may not be prepaid and permanently satisfied. The special tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

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

SECTION 7. The name, address and telephone number of the office that will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and that will be responsible for estimating further special tax levies pursuant to Section 53340.2 of the Act are as follows: Management Analyst, Management Services, City of Ontario, 303 East B Street, Ontario, California 91764, (909) 395-2341.

SECTION 8. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the Community Facilities District and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City Council ceases.

SECTION 9. The boundary map of the Community Facilities District has been recorded in San Bernardino County in Book 88 at Page 5 of Maps of Assessments and Community Facilities Districts in the San Bernardino County Recorder's Office (Document No. 2018-0419061).

SECTION 10. The annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the Community Facilities District is hereby established at \$51,000,000.

SECTION 11. Pursuant to the provisions of the Act, the levy of the special tax and a proposition to establish the appropriations limit specified above shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The City Council hereby finds and determines that that no persons were registered to vote within the territory of the proposed Community Facilities District as of November 20, 2018, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearing held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax. The voting procedure shall be by mailed or hand-delivered ballot.

SECTION 12. The City Council hereby finds and determines that all proceedings up to and including the adoption of this Resolution were valid and in conformity with the requirements of the Act. In accordance with Section 53325.1 of the Act, such finding shall be final and conclusive.

SECTION 13. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 14. 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 18<sup>th</sup> day of December 2018.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-     duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

## EXHIBIT A

### SERVICES AND INCIDENTAL EXPENSES

#### Services

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

#### Incidental Expenses

The incidental expenses proposed to be incurred include the costs associated with the creation of the Community Facilities District, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District.

EXHIBIT B  
CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 44  
(ESPERANZA SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 44 (Esperanza Services) ("CFD No. 44") and collected each Fiscal Year commencing in Fiscal Year 2018-19, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 44, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms as may hereinafter be set forth have the following meanings:

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

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 44: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 44 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 44 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 44; and amounts estimated or advanced by the City or CFD No. 44 for any other administrative purposes of CFD No. 44, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

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

**“CFD No. 44”** means City of Ontario Community Facilities District No. 44 (Esperanza Services).

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

**“City Council”** means the City Council of the City, acting as the legislative body of CFD No. 44.

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

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

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

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

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

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

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

**“Non-Residential Property”** means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction was issued after January 1, 2018, and before May 1 of the prior Fiscal Year, for a Non-Residential use.

**“Property Owner Association Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 44 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

**“Proportionately”** means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Property.

**“Public Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 44 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property

leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

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

**“Residential Property”** means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2018, and before May 1 of the prior Fiscal Year.

**“Services”** means the services authorized to be financed, in whole or in part, by CFD No. 44, including: police protection services; fire protection and suppression services; ambulance and paramedic services; maintenance and lighting of parks, parkways, streets, roads, and open space; flood and storm protection services; and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

**“Special Tax”** means the special tax authorized by the qualified electors of CFD No. 44 to be levied within the boundaries of CFD No. 44.

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

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

**“Square Footage”** or **“Sq. Ft.”** means, with respect to a building of Non-Residential Property, the gross floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 44, for such building, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

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

**“Taxable Property”** means, for each Fiscal Year, all Assessor’s Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 44 which are not exempt from the Special Tax pursuant to law or Section E below.

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

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, beginning with Fiscal Year 2018-19, all Taxable Property within CFD No. 44 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Apartment Community Dwelling Unit) or Non-Residential Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

**C. MAXIMUM SPECIAL TAX**

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

**TABLE 1  
MAXIMUM SPECIAL TAX**

<b>Land Use Class</b>	<b>Maximum Special Tax Fiscal Year 2018-19</b>
<b>Residential Property:</b>	
Single Family Detached Dwelling Unit	\$1,622 per Unit
Multiple Family Dwelling Unit	\$1,406 per Unit
Gated Apartment Community Dwelling Unit	\$1,179 per Unit
<b>Non-Residential Property</b>	\$0.30 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2019, the Maximum Special Tax to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

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

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

Each Fiscal Year, beginning with Fiscal Year 2018-19, the CFD Administrator shall determine the Special Tax Requirement. The Special Tax shall then be levied Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.

**E. EXEMPTIONS**

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

**F. APPEALS**

Any property owner may file a written appeal of the Special Tax with CFD No. 44 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

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

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

**G. MANNER OF COLLECTION**

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

**H. TERM OF SPECIAL TAX**

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 44.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES).

WHEREAS, on this date, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 44 (Esperanza Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation"), establishing City of Ontario Community Facilities District No. 44 (Esperanza Services) (the "Community Facilities District"), authorizing the levy of a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District; and

WHEREAS, pursuant to the provisions of the Resolution of Formation, the propositions to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District are to be submitted to the qualified electors of the Community Facilities District as required by the Act; and

WHEREAS, the City Council desires to designate the City Clerk of the City (the "City Clerk") as the election official for the special election provided for herein; and

WHEREAS, there has been filed with the City Clerk a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of November 20, 2018, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings on the establishment of the Community Facilities District; and

WHEREAS, there has been filed with the City Clerk consents and waivers of all of the landowners of record in the Community Facilities District waiving any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said special election, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act), consenting to the holding of said special election on December 18, 2018 and waiving any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act; and

WHEREAS, the City Clerk has concurred in said waivers and has concurred in holding said special election on December 18, 2018.

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

SECTION 1. Pursuant to Sections 53326 and 53325.7 of the Act, the propositions to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District shall be submitted to the qualified electors of the Community Facilities District at an election called therefor as provided below.

SECTION 2. The City Clerk is hereby designated as the official to conduct said election.

SECTION 3. As authorized by Section 53353.5 of the Act, the propositions to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District shall be combined into one ballot proposition.

SECTION 4. The City Council hereby finds and determines that no persons were registered to vote within the territory of the proposed Community Facilities District as of November 20, 2018, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings heretofore held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax.

SECTION 5. The City Council hereby finds and determines that the qualified electors of the Community Facilities District have unanimously consented (a) to the waiver of any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said election, (b) to the holding of said election on December 18, 2018, and (c) to the waiver of any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act. The City Council hereby finds and determines that the City Clerk has concurred in said waivers and has concurred in holding said election on December 18, 2018.

SECTION 6. The City Council hereby calls a special election to submit to the qualified electors of the Community Facilities District the combined proposition to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District, which election shall be held at 303 East B Street, Ontario, California, on December 18, 2018. The City Council has caused to be provided to the City Clerk, as the official to conduct said election, the Resolution of Formation, a certified map of sufficient scale and clarity to show the boundaries of the Community Facilities District, and a sufficient description to allow the City Clerk to determine the boundaries of the Community Facilities District.

The voted ballots shall be returned to the City Clerk not later than 7:30 p.m. on December 18, 2018; provided, however, that if all of the qualified electors have voted prior to such time, the election may be closed with the concurrence of the City Clerk.

SECTION 7. Pursuant to Section 53326 of the Act, the election shall be conducted by mail or hand-delivered ballot pursuant to Section 4000 *et. seq.* of the California Elections Code. Except as otherwise provided in the Act, the provisions of law regulating elections of the City, insofar as they may be applicable, will govern the election.

SECTION 8. The form of the ballot for said election is attached hereto as Exhibit A and by this reference incorporated herein, and such form of ballot is hereby approved. The City Clerk shall cause to be delivered to each of the qualified electors of the Community Facilities District a ballot in said form. Each ballot shall indicate the number of votes to be voted by the respective landowner to which it pertains.

Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The identification envelope for return of the ballot shall be enclosed with the ballot, shall have the return postage prepaid, and shall contain: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration described in clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

Analysis and arguments with respect to the ballot proposition are hereby waived, as provided in Section 53327 of the Act.

SECTION 9. The City Clerk shall accept the ballots of the qualified electors in the office of the City Clerk at 303 East B Street, Ontario, California, to and including 7:30 p.m. on December 18, 2018, whether said ballots be personally delivered or received by mail. The City Clerk shall have available ballots which may be marked at said location on the election day by said qualified electors.

SECTION 10. The City Council hereby determines that the services financed by the Community Facilities District are necessary to meet increased demands placed upon local agencies as a result of development occurring in the Community Facilities District.

SECTION 11. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

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

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

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of December 2018.

---

PAUL S. LEON, MAYOR

ATTEST:

---

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-     duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

OFFICIAL BALLOT

CITY OF ONTARIO  
DECEMBER 18, 2018

SPECIAL ELECTION

This ballot is for a special, landowner election. The number of votes to be voted pursuant to this ballot is \_\_\_\_.

INSTRUCTIONS TO VOTERS:

To vote on the measure, mark a cross (+ or X) in the voting square after the word "YES" or after the word "NO". All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Ontario and obtain another.

CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 44  
(ESPERANZA SERVICES)

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall the City of Ontario Community Facilities District No. 44 (Esperanza Services) (the "Community Facilities District") be authorized to levy a special tax in order to finance certain services and shall the annual appropriations limit of the Community Facilities District be established in the amount of \$51,000,000, all as specified in the Resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 44 (Esperanza Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District," adopted by the City Council of the City of Ontario on December 18, 2018?

Yes:

No:

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND  
DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN.

WHEREAS, on December 18, 2018, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 44 (Esperanza Services)" (the "Resolution Calling Election"), calling for a special election of the qualified electors within City of Ontario Community Facilities District No. 44 (Esperanza Services) (the "Community Facilities District"); and

WHEREAS, pursuant to the terms of the Resolution Calling Election and the provisions of the Act, the special election was held on December 18, 2018; and

WHEREAS, the City Clerk of the City (the "City Clerk") has certified the canvass of the returns of the election and has filed a Canvass and Statement of Results of Election (the "Canvass"), a copy of which is attached hereto as Exhibit A.

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

SECTION 1. The City Council has received, reviewed and hereby accepts the Canvass.

SECTION 2. The City Council hereby finds and declares that the ballot proposition submitted to the qualified electors of the Community Facilities District pursuant to the Resolution Calling Election has been passed and approved by such electors in accordance with Section 53328 and Section 53325.7 of the Act.

SECTION 3. The City Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of San Bernardino a notice of special tax lien in the form required by the Act, said recording to occur no later than fifteen days following adoption by the City Council of this Resolution.

SECTION 4. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 5. 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 18<sup>th</sup> day of December 2018.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-     duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A  
 CITY OF ONTARIO  
 COMMUNITY FACILITIES DISTRICT NO. 44  
 (ESPERANZA SERVICES)

CANVASS AND STATEMENT OF RESULTS OF ELECTION

I hereby certify that on December 18, 2018, I canvassed the returns of the special election held on December 18, 2018, for the City of Ontario Community Facilities District No. 44 (Esperanza Services), that the total number of ballots cast in said Community Facilities District and the total number of votes cast for and against the proposition are as follows and that the totals as shown for and against the proposition are true and correct:

	Qualified Landowner Votes	Votes Cast	YES	NO
City of Ontario Community Facilities District No. 44 (Esperanza Services) Special Election, December 18, 2018	114	_____	_____	_____

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall the City of Ontario Community Facilities District No. 44 (Esperanza Services) (the "Community Facilities District") be authorized to levy a special tax in order to finance certain services and shall the annual appropriations limit of the Community Facilities District be established in the amount of \$51,000,000, all as specified in the Resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 44 (Esperanza Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District," adopted by the City Council of the City of Ontario on December 18, 2018?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 18<sup>th</sup> day of December, 2018.

By: \_\_\_\_\_  
 Sheila Mautz, City Clerk

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 44 (ESPERANZA SERVICES).

WHEREAS, on November 6, 2018, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 44 (Esperanza Services) and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 44 (Esperanza Services) (the "Community Facilities District") and to finance certain services (the "Services"); and

WHEREAS, on December 18, 2018, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 44 (Esperanza Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation") and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 44 (Esperanza Services)," which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on December 18, 2018, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act;

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies special taxes within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method of Apportionment"). The special taxes are hereby levied commencing in fiscal year 2018-19 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

SECTION 2. The City Council may, in accordance with subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the special tax in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the special tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method of Apportionment.

SECTION 3. The special tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method of Apportionment.

SECTION 4. The proceeds of the special tax shall only be used to pay, in whole or in part, the cost of providing the Services and incidental expenses pursuant to the Act.

SECTION 5. The special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes, unless another procedure is adopted by the City Council.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

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

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, 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 December 18, 2018 and adopted at the regular meeting held \_\_\_\_\_, 2019 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)

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DISSOLVING CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 11 (ESPERANZA I).

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), previously established City of Ontario Community Facilities District No. 11 (Esperanza I) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, the qualified electors of the Community Facilities District authorized the levy of special taxes (the "Special Taxes") within the Community Facilities District to finance certain public facilities (the "Facilities") and certain public services (the "Services"); and

WHEREAS, pursuant to the Act, a Notice of Special Tax Lien with respect to the Community Facilities District was recorded in the Office of the County Recorder of the County of San Bernardino on October 18, 2007, as Instrument No. 2007-0586188 (the "Notice of Special Tax Lien"); and

WHEREAS, no debt has been incurred by the Community Facilities District; and

WHEREAS, the owners of 100% of the land in the Community Facilities District not exempt from the Special Taxes (the "Landowners") have each submitted a written request that the Facilities and Services not be financed with the Special Taxes and that the Community Facilities District be dissolved pursuant to Section 53338.5 of the Act; and

WHEREAS, such written requests of the Landowners have been granted and the City Council has determined that no Facilities are to be financed by the Community Facilities District; and

WHEREAS, such written requests of the Landowners have been granted and the City Council has determined that no Services are to be financed by the Community Facilities District; and

WHEREAS, as no Facilities and no Services are to be financed, the Community Facilities District has no authorization to levy the Special Taxes; and

WHEREAS, the City Council desires to dissolve the Community Facilities District pursuant to Section 53338.5 of the Act.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

SECTION 2. The City Council hereby finds and determines that the Community Facilities District is not obligated to pay any outstanding debt.

SECTION 3. The City Council hereby finds and determines that the Community Facilities District has no authorization to levy the Special Taxes.

SECTION 4. The Community Facilities District is hereby dissolved.

SECTION 5. The City Clerk of the City is hereby directed to cause to be recorded with the County Recorder of the County of San Bernardino an addendum to the Notice of Special Tax Lien, which shall state that the Community Facilities District and all associated liens, if any, have been dissolved.

SECTION 6. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Ordinance and not inconsistent with the provisions hereof.

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

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

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, 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 December 18, 2018 and adopted at the regular meeting held \_\_\_\_\_, 2019 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  
December 18, 2018

SECTION:  
PUBLIC HEARINGS

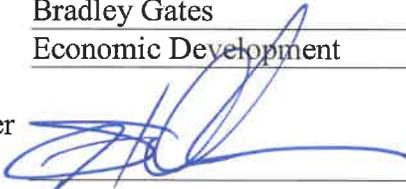
**SUBJECT: A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND CONCRETE HOLDING COMPANY OF CALIFORNIA, INC., PURSUANT TO GOVERNMENT CODE SECTION 53083; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS.**

**RECOMMENDATION:** That the City Council take the following actions:

- (A) Hold the public hearing;
- (B) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement (on file with the Records Management Department) by and between the City of Ontario and Concrete Holding Company of California, Inc., a Delaware Corporation, hereinafter referred to as "Concrete Holding";
- (C) Adopt a resolution approving the Operating Covenant Agreement for no less than forty years, authorizing the City Manager to execute the Operating Covenant Agreement, and making related findings; and
- (D) Direct City staff to file a Notice of Exemption based upon the City Council's finding that the impacts for this existing facility is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment.

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

**STAFF MEMBER PRESENTING:** John Andrews, Executive Director, Economic Development

Prepared by: Bradley Gates  
Department: Economic Development  
City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

13

**FISCAL IMPACT:** This Operating Covenant Agreement will result in substantial new sales tax revenues to be received by the City annually, of which, without this agreement, the receipt of these new sales tax revenues would not be realized.

If approved, the operating covenant payments between the City and Concrete Holding will be calculated based on Concrete Holding's sales tax revenue during each computation quarter in an amount equal to the sum of fifty percent (50%) of Concrete Holding's sales tax revenues attributable to that quarter, plus an amount equal to fifty percent (50%) of the Sales Tax Revenues attributable to Concrete Holding's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Concrete Holding's purchase of machinery and equipment from outside of California during such computation quarter. Computation quarters means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable. If approved, October 1, 2018 will be known as Computation Quarter 1, and any payment made will be for the portion of the quarter between the effective date of this agreement and December 31, 2018, with each succeeding Computation Quarter within the eligibility period being consecutively numbered. Entering into the agreement ensures that the local sales tax revenue generated by Concrete Holding will remain in the city for a minimum of the forty (40) year contract term.

**BACKGROUND:** The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. The City of Ontario receives one percent (1%) of all taxable sales generated within the City under this law. The City only receives sales tax from e-commerce transactions when the City is appropriately designated as the point-of-sale for sales transactions. Sales and Use Tax revenues are an important source of revenue for the City, which are used to provide essential City services, such as police, fire, and infrastructure maintenance and community facilities.

Concrete Holding is a national vendor of Portland cement and ready-mix concrete products that serves both the residential and commercial construction markets. Concrete Holding is in need of establishing a regional sales and procurement office to serve as the home location for its sales associates and the creation of a purchasing company.

The City is proposing to enter into an Operating Covenant Agreement in order to assist Concrete Holding with the establishment of a regional sales and procurement office within the City for a period of no less than forty years. By entering into this agreement, it is intended that Concrete Holding will generate substantial revenue for the City through additional local sales tax revenues that would not be available to the City without this agreement.

Concrete Holding will lease approximately 12,000 square feet of office space, located at 2084 E. Francis Street, Ontario, CA 91761, to open a regional sales and procurement office. The office will be staffed initially with 20 sales associates and a total number of 40 employees. The office will be used for sales meetings, display of merchandise, managerial meetings and other sales functions.

Senate Bill 533 went into effect on January 1, 2016. This bill prohibits a local agency from entering into an agreement that would result in the payment of local tax revenues to an entity if the agreement will result in a reduction of Bradley-Burns local tax revenues to another local agency and the entity is maintaining a presence in the other local jurisdiction. Concrete Holding Company of California, Inc. is a newly established company and does not currently have a business location or generate sales in the state of California, therefore, the prohibitions in SB533 are not applicable to this proposed Operating Covenant Agreement.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE DEVELOPMENT OF A REGIONAL SALES OFFICE BY CONCRETE HOLDING COMPANY OF CALIFORNIA, INC. IN THE CITY OF ONTARIO AND APPROVING AN OPERATING COVENANT AGREEMENT.

WHEREAS, the City of Ontario ("City") and Concrete Holding Company of California, Inc. ("Concrete Holding") have negotiated an Operating Covenant Agreement ("Agreement") for the establishment of a Sales Office within the City; and

WHEREAS, pursuant to that Agreement Concrete Holding is committed to opening and operating a Sales Office in the City for not less than 40 years; and

WHEREAS, Concrete Holding is also covenanted to, among other things, designate the City as the point of sale for certain merchandise transactions; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to

- Fifty percent (50%) of the sales tax generated by transactions in which the regional sales office participates; plus
- An amount equal to fifty percent (50%) of the Sales Tax Revenues attributable to Owner's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Owner's purchase of machinery and equipment from outside of California during such Computation Quarter.

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the allocation of funds to Concrete Holding pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the establishment of the Sales Office will provide numerous public benefits including:

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- The creation of high paying/management jobs and provide opportunity for additional job growth throughout the term of this Agreement.

- Helping the City achieve the building blocks set forth in the Ontario Plan (adopted by the City Council in 2010) including taking actions that help to achieve a “Dynamic Balance” that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a “Prosperous Economy” that sustains prosperity across our entire community; and
- Entering into this Agreement and ensuring the establishment of the Sales Office may attract additional businesses and investment in the community due to increased services and economic activity in the area.

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on December 18, 2018 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, Concrete Holding is a newly formed corporation and does not have a sales office in other jurisdictions in California and the creation of a centralized sales office serves Concrete Holding’s business purposes in that the advantageous location of the City and its business conducive environment will permit Concrete Holding to operate more efficiently and effectively, will better serve its customers, and may provide an avenue for business expansion in the future; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AS FOLLOWS:

SECTION 1.     Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2.     Findings. The City Council hereby finds that:

(a)     Entering into this Agreement will serve the following public purposes:

(1)     Through this Agreement, Concrete Holding, will be committed to opening and operating a Regional Sales Office in the City for transacting merchandise sales.

(2)     The establishment of the sales office within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

(3)     By having a company like Concrete Holding establish a physical presence in the City, the City will be adding diversity to and generating new opportunities for economic growth.

(4) Further, the establishment of the new sales office serves the public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. The increased economic activity resulting from the sales office and Concrete Holding's presence in the City will improve the economic and social viability and vitality of the local community.

(5) Entering into this Covenant Agreement will also further the City's efforts to achieve certain goals set forth in the 2010 Ontario Plan. The Ontario Plan included certain building blocks for the economic growth and improvement of the community. The Plan called upon the City to take actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community. The establishment of the Regional Sales Office is another step in achieving those goals.

(b) Based upon these and other public benefits the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Contingent Obligations. The City finds that each City obligation is contingent upon separate consideration by Concrete Holding including but not limited to quarterly sales tax generation.

SECTION 3. CEQA. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply 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.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in substantially final form as attached to this Resolution as Exhibit B. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to make any non-financially substantive changes determined to be appropriate and in the City's interest and execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of December 2018.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-    duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A  
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

**ECONOMIC DEVELOPMENT SUBSIDY REPORT  
PURSUANT TO GOVERNMENT CODE SECTION 53083**

**FOR AN OPERATING COVENANT AGREEMENT  
BY AND BETWEEN  
CITY OF ONTARIO  
AND  
CONCRETE HOLDING COMPANY OF CALIFORNIA, INC.**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and Concrete Holding Company of California, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on December 18, 2018.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

- 1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

The Agreement is with CONCRETE HOLDING COMPANY OF CALIFORNIA, INC. a Delaware corporation ("Concrete Holding"). Concrete Holding is the sole beneficiary of the economic development subsidy.

CONCRETE HOLDING COMPANY OF  
CALIFORNIA, INC.  
15821 Ventura Blvd., Suite 475  
Encino, CA 91436;  
Telephone (818) 728-5200;  
Facsimile (818) 788-0615

- 2. The start and end dates and schedule, if applicable, for the economic development subsidy.**

If the Agreement is approved by the City Council the term will begin on the Effective Date of the Agreement and continue for 40 years. The first Covenant Payment will be paid following the first Covenant Quarter in which Concrete Holding has performed its covenants and other obligations pursuant to the Agreement.

**3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.**

The economic development subsidy shall be the sum of (a) fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales for the calendar year which includes such Computation Quarter plus (b) an amount equal to fifty percent (50%) of the Sales Tax Revenues attributable to Owner's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Owner's purchase of machinery and equipment from outside of California during such Computation Quarter.

The City estimates that the total amount of the expenditure or loss of revenue of public funds as a result of the economic development subsidy will be up to sixty million dollars (\$60,000,000). However, Concrete Holding's covenants to City will cause Concrete Holding's Taxable Sales to be paid to the City which is estimated to be one hundred twenty million dollars (\$120,000,000).

**4. A statement of the public purposes for the economic development subsidy.**

CONCRETE HOLDING COMPANY OF CALIFORNIA, INC. is a national retailer of cement and concrete products and does not currently have a sales office in California to facilitate retail sales transactions. Through this Agreement, Concrete Holding will establish a business location in the City of Ontario for the purpose of operating a regional sales office for facilitating retail sales transactions.

The City has determined that Concrete Holding's presence will generate substantial revenue for the City, allow for the retention and creation of new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

Further, the location of Concrete Holding in Ontario serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. This Agreement furthers the policies of the City to be business friendly and support economic growth including providing for the creation of new job opportunities and new sources of revenue that support residents and city services.

**5. The projected tax revenue to the local agency as a result of the economic development subsidy.**

The City anticipates that the location of Concrete Holding facilities within the City will result in an approximate increase of annual sales tax revenue in the amount of three million dollars (\$3,000,000), minus the covenant payments to be paid to Concrete Holding, as set forth in number 2 above.

In addition, the value of the new improvements associated with the business is valued at approximately fifty thousand dollars (\$50,000) and will result in additional real property taxes in the amount of five hundred dollars (\$500).

The City will receive an estimated one thousand dollars (\$1,000) in business license tax from Concrete Holding annually.

**6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.**

The location of Concrete Holding within the City is anticipated to result in the location of 60 jobs currently over the term of the agreement as the facility grows, as follows:

- 40 full-time jobs
- 10 part-time jobs
- 10 temporary positions

Concrete Holding will be leasing a facility and completing certain tenant improvements that are anticipated to create up to 10 temporary jobs. Additionally, upon opening the sales office, the Ontario location will support up to 20 full-time office-based jobs and up to 20 full-time sales associates.

EXHIBIT B  
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

**OPERATING COVENANT AGREEMENT**  
**between**  
**THE CITY OF ONTARIO,**  
**a California municipal corporation,**  
**and**  
**CONCRETE HOLDING COMPANY OF CALIFORNIA, INC.**  
**a Delaware corporation**

Dated as of [December 18, 2018], for reference purposes only

## RECITALS

**WHEREAS**, CONCRETE HOLDING COMPANY OF CALIFORNIA, INC. (“**CONCRETE HOLDING COMPANY**”), a Delaware corporation, a retailer of consumer products with retail sales in the United States of America and its territories is considering either locating a sales office and/or a business location that participates in the sales process within the City of Ontario, California; and

**WHEREAS**, the incentives provided in this Agreement are intended to ensure CONCRETE HOLDING COMPANY establishes a business location that participates in the sales process within the City, expands its operations within the City as appropriate and remains in the City for not less than 40 years; and

**WHEREAS**, the location of the CONCRETE HOLDING COMPANY business in the City of Ontario will place new and additional burdens on City resources including but not limited to police, fire, and infrastructure services; and

**WHEREAS**, the City has determined that the establishment of a CONCRETE HOLDING COMPANY business location that participates in the sales process within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Ontario and CONCRETE HOLDING COMPANY agree as follows:

### ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

**1.1 Effective Date of Covenant Agreement.** This CONCRETE HOLDING COMPANY Operating Covenant Agreement (“**Covenant Agreement**”) is dated December 18, 2018, for reference purposes only. This Covenant Agreement will not become effective (the “**Effective Date**”) until the date on which all of the following are true:

**1.1.1** This Covenant Agreement has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;

**1.1.2** Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council; and

**1.1.3** This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Owner.

If all of the foregoing conditions precedent have not been satisfied by

December 31, 2018, then this Covenant Agreement shall not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect.

## **1.2 Parties to Covenant Agreement.**

**1.2.1 The City.** The address of the City is 303 East B Street, Ontario, California 91764, Attention: Scott Ochoa, City Manager, 303 East B Street, Ontario, CA 91764; Telephone (909) 395-2555; Facsimile (909) 395-2189; with copies to John Brown, City Attorney, 2855 East Guasti Road, Suite 400, Ontario, CA 91761, Telephone: (909) 989-8584.

The City represents and warrants to Owner that:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

The representations and warranties set forth above are material consideration to Owner and the City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Covenant Agreement.

As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the office of the City Manager as of the Effective Date, without having undertaken any independent inquiry or

investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns.

**1.2.2 Owner.** The address of CONCRETE HOLDING COMPANY OF CALIFORNIA, INC. ("**Owner**") for purposes of this Covenant Agreement is 15821 Ventura Blvd., Suite 475, Encino, CA 91436; telephone (818) 728-5200; facsimile (818) 788-0615.

Owner represents and warrants to the City that:

(a) Owner is a duly formed Delaware corporation, qualified and in good standing to do business under the laws of the State of California;

(b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Owner;

(c) Owner has taken all actions required by law to approve the execution of this Covenant Agreement;

(d) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Owner;

(e) Owner's entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;

(f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Covenant Agreement; and

(g) Owner has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein. Owner covenants that nothing in this Agreement or the implementation thereof shall violate the provisions or intent of Government Code Section 53084.5.

The representations and warranties set forth herein are material consideration to the City and Owner acknowledges that the City is relying upon the representations set forth above in undertaking the City's obligations set forth above.

As used in this Covenant Agreement, the term "actual current knowledge of Owner" shall mean, and shall be limited to, the actual current knowledge of Pragati Kapoor, Chief Financial Officer, as of the Effective Date, without having undertaken any independent

inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Owner and its permitted nominees, successors and assigns. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein.

**1.2.3** The City and Owner are sometimes individually referred to as "Party" and collectively as "Parties."

### **1.3 Definitions.**

**1.3.1 "Affiliate"**, as defined by the Internal Revenue Code (IRC) Section 1504, means any corporation included in Concrete Holding Company of California, Inc.'s affiliated group, except National Ready Mixed Concrete Co..

**1.3.2 "CDTFA"** means the California Department of Tax and Fee Administration.

**1.3.3 "City"** means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

**1.3.4 "Computation Quarter"** means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Computation Quarter within the Eligibility Period shall commence on October 1, 2018 and shall be referred to herein as "Computation Quarter 1," with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with Computation Quarter 160. Owner shall only be entitled to a Covenant Payment calculated for Computation Quarter 1 based upon revenues generated and received by City following the Effective Date of this Agreement.

**1.3.5 "Covenant Payment(s)"** means those contingent payments to be made by the City to the Owner pursuant to Section 3.2 of this Covenant Agreement in consideration of the Covenants and Owner's timely and faithful performance thereunder.

**1.3.6 "Covenant Term"** means, a period of forty (40) years following the Effective Date (unless terminated sooner pursuant to specific provisions of this Covenant Agreement).

**1.3.7 "Covenants"** means those covenants described in Section 3.1 herein.

**1.3.8 “Sales Office and/or Business Location that Participates in the Sales Process”** means that certain CONCRETE HOLDING COMPANY corporate sales/administrative offices operated on the Property by Owner.

**1.3.9 “Eligibility Period”** means the period commencing as of the first (1<sup>st</sup>) day of Computation Quarter 1 and ending the last day of Computation Quarter 160 (i.e., December 31, 2058).

**1.3.10 “Governmental Authority”** means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**1.3.11 “Law”** means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award by or settlement agreement with any Governmental Authority.

**1.3.12 “Liquidated Damages”** means, for purposes of Section 3.6, as follows:

(a) If the breach occurs during Computation Quarters 1 through 40, an amount equal to the previous two (2) Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

**1.3.13 “Owner”** means and refers to CONCRETE HOLDING COMPANY OF CALIFORNIA, INC., a Delaware corporation and its successors and assigns, cumulatively.

**1.3.14 “Owner’s Sales Activities”** means the commercially reasonable business practices and activities associated with Owner’s retail and wholesale sale of consumer products.

**1.3.15 “Penalty Assessments”** means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

**1.3.16 “Property”** means that certain real property commonly known as 2084 E. Francis Street, Ontario, CA 91791, or any other property within the City of Ontario to which Owner may elect to relocate the Sales Office and/or Business Location that Participates in the Sales Process during the term of this Covenant Agreement.

**1.3.17 “Sales Tax”** means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to Owner’s Sales Activities at the Sales Office and/or Business Location that Participates in the Sales Process excluding that which is to be refunded to Owner because of an overpayment of such tax.

**1.3.18 “Sales Tax Law”** means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the CDTFA and other binding rulings and

interpretations relating to (a) and (b) of this Section 1.3.18.

**1.3.19 “Sales Tax Revenues”** means the net Sales Tax actually received by the City from the CDTFA pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to Owner’s Sales Activities at the Sales Office and/or Business Location that Participates in the Sales Process in a particular Computation Quarter, inclusive of any offsetting revenues described in the last paragraph of Section 4.23 hereof. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the CDTFA; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City’s general fund.

**1.3.20 “Taxable Ontario Sales”** means Owner’s taxable California sales transactions, including, but not limited to, sales through an Internet website or phone sales, that result from either Owner’s Sales Activities or for products shipped from the Ontario location to addresses located in California.

## **ARTICLE 2. ADDITIONAL RECITALS**

**2.1** The previously stated Recitals are incorporated herein and made a part hereof as though fully set forth.

**2.2** The City has determined that the long-term operation of the Sales Office will result in substantial benefits to the City, and its citizens including, without limitation, the creation of significant new employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement and the purchase of the Covenants herein serve a significant public purpose, while providing only incidental benefits to a private party.

**2.3** The Parties agree and acknowledge that Owner will be leasing and operating within the City a Sales Office.

## **ARTICLE 3. OWNER COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.**

### **3.1 Covenants Running with the Land.**

**3.1.1 Operating and Use Covenant.** Subject to Section 4.9, Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the Sales Office in a commercially reasonable business manner, consistent with all applicable Law. Owner will operate its business in a commercially reasonable and prudent

manner. Owner's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain all federal, state and local licenses and permits required for the operation of the business and to advertise, market and promote the business in a commercially reasonable fashion.

**3.1.2 Covenant to Designate City as the Point of Sale.** Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner's Sales Activities related to the Sales Office. Except as otherwise provided by applicable Law, including but not limited to Government Code Section 53084.5, Owner shall use commercially reasonable efforts to designate City as the "point of sale" and consummate at the Sales Office all Taxable Ontario Sales and the Owner shall identify the City as such in its reports to the CDTFA in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, *et seq.*), as it may be amended or substituted for all sales processed through the Ontario sales office. Owner shall use commercially reasonable efforts to conduct product sales to California residents from the Sales Office, including but not limited to assigning appropriate sales staff to the Property and conducting negotiations of sales from the Sales Office. The Owner shall consummate all Taxable Ontario Sales transactions for Owner's Sales Activities at the Sales Office, consistent with all applicable statutory and CDTFA regulatory requirements applicable to Owner's Sales Activities and the designation of the City as the "point of sale" for all such Taxable Ontario Sales.

**3.1.3 Owner's Additional Obligations Regarding Repairs and Alterations to Sales Office.** Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, the Owner shall maintain, or cause to be maintained, the Sales Office in good condition, ordinary wear and tear excepted, and free from the unreasonable accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Sales Office. Owner shall also maintain or cause to be maintained the landscaping upon the Property in a good condition.

**3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant.** Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner will not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in either Owner's breach of any of the Covenants. For purposes of this Section 3.1.4 the term "Financial Assistance" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner.

**3.1.5 Use of Property.** Owner covenants and agrees that the Property shall be put to no use other than those uses specified in the City's General Plan, the Specific Plan, zoning ordinances, and this Covenant Agreement as the same may be amended from time to time. Nothing in this Section 3.1.5 shall limit, expand, modify or otherwise affect any right of the Owner to continue any legal nonconforming use upon the Property following changes in the

City's General Plan or zoning ordinances. For the term of this Operating Covenant, the Owner may use the Property only for the purposes of the operation of the Sales Office and conducting Owner's Sales Activities in accordance with this Covenant Agreement.

### **3.2 Covenant Payments.**

**3.2.1 Statement of Intent.** The City's obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter (hereinafter described), City's obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. The Parties hereto each acknowledge and agree that the intent of each such Party is that any payment made pursuant to Sections 3.2.2 shall be made from any available funds designated for payment by the City and shall not be a rebate, refund or abatement of the Taxes payable by Owner. Any reference to percentage of Sales Tax Revenues is for purposes of calculation and not a commitment of a specific revenue source. The Parties acknowledge and agree that Owner shall only be entitled to a Covenant Payment calculated for Computation Quarter 1 based upon revenue generated and received by City following the Effective Date of this Agreement.

**3.2.2 Covenant Payment Amount.** The consideration to be paid to the Owner in exchange for the Covenants and Owner's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment to the Owner for each Computation Quarter during the Eligibility Period that the City receives Sales Tax Revenue, an amount equal to (a) the sum of (1) fifty percent (50%) of the Sales Tax Revenues attributable to annual taxable sales for the calendar year which includes such Computation Quarter, as determined on a cumulative basis for such calendar year, plus (b) an amount equal to fifty percent (50%) of the Sales Tax Revenues attributable to Owner's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Owner's purchase of machinery and equipment from outside of California during such Computation Quarter. Any such payment due pursuant to this Section shall not be due unless Owner has completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

**3.2.3 Computation Quarter Covenant Payments.** Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City copies of its quarterly reports to the CDTFA for the applicable Computation Quarter which sets forth the amount of Sales Taxes paid to the CDTFA during the Computation Quarter arising from Owner's Sales Activities and/or attributable to the Sales Office. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter.

**3.2.4 No Carry Forward or Back.** The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.5 or 3.2.6, no Sales Tax Revenue which is

generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

**3.2.5 Adjustments to Covenant Payment Amounts.** If after City makes a Covenant Payment to Owner hereunder City or Owner determines that the Covenant Payment has been overpaid or underpaid and that an adjustment to a prior payment amount is warranted, City or Owner, as the case may be, shall have the right to provide a written notice to the other Party itemizing the information supporting the adjustment and either (a) requiring the City or Owner to pay the amount of the underpayment or overpayment, as applicable, within thirty (30) days from the date such notice is delivered or (b) deduct the amount of the overpayment from the next Covenant Payment otherwise owing to Owner. The Parties shall cooperate with one another and share such information as may be reasonably required to ensure that any required adjustments (either an additional payment to Owner or a refund or credit to City) can be promptly made.

**3.2.6 CDTFA Determination of Improperly Allocated Local Sales Tax Revenues.** If, at any time during or after the Eligibility Period of this Covenant Agreement, the CDTFA determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.6 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement. This Section 3.2.6 shall survive the expiration or termination of this Covenant Agreement. The City will, within three (3) business days, contact Owner regarding any communication from the CDTFA pertaining to tax allocations associated with Owner's business that may result in a recalculation of the tax. The City and Owner agree that, should the CDTFA question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the City will engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Any cost or expense associated with such efforts will be borne by the Owner and the City equally. For purposes of this paragraph, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board Members. Owner will reasonably cooperate with the City and its attorney. Additionally, Owner shall have the right, but not the obligation, to participate in any such administrative proceedings and may engage its own legal counsel or consultant, at its own cost.

**3.2.7 Not a Pledge of Sales Tax.** Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount payment due

hereunder and as means of computing the City's payment in consideration for the Covenants. It is acknowledged by Owner that the City's obligation to make payments is specifically contingent upon receipt by the City of the Sales Tax Revenues derived from operation of the Sales Office.

### **3.3 Default.**

**3.3.1 Owner Default.** City shall provide Owner with written notice of Owner's failure ("**Owner Default**") to strictly abide by any material provision of this Covenant Agreement, including, without limitation, the Covenants. Owner shall have thirty (30) days from the date of such notice to either cure such Owner Default, or, if such Owner Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

**3.3.2 City Default.** Owner shall provide City with written notice of City's failure ("**City Default**") to strictly abide by any material provision of this Covenant Agreement. City shall have thirty (30) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

**3.4 General Remedies for Default.** Upon either a City Default, after expiration of all applicable notice and grace periods, or an Owner Default, after expiration of all applicable notice and grace periods (as defined in Section 3.3), Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, unless otherwise expressly provided to the contrary herein. Notwithstanding anything in this Covenant Agreement to the contrary, (a) neither Party shall be liable to the other Party for consequential damages and (b) in no event shall the City have the right of specific performance or other mandatory injunctive relief to compel the Owner to operate the Sales Office. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement, the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and either Party may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party, after expiration of all applicable notice and grace periods, and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

**3.5 The City's Rights to Terminate its Obligations under Section 3.3.** The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (a) Owner Default, as to which any applicable cure period provided for herein has expired; or (b) the end of the Eligibility Period; or (c) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity.

### **3.6 Liquidated Damages.**

#### **3.6.1 Owner Default with Respect to Obligations Under Sections 3.1.1 and**

3.1.2. The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from Owner's Sales Activities and the operation and location of the Sales Office in the City in accordance with Article 3 of this Covenant Agreement. Owner agrees that the City will suffer damages if Owner commits any Owner Default with respect to any of its obligations arising under Sections 3.1.1 and 3.1.2. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to Section 1.3.11) represents a reasonable estimate of the damages which would be suffered by the City if Owner commits any Owner Default with respect to any of its obligations set forth in Sections 3.1.1 and 3.1.2. Accordingly, as its sole and exclusive monetary remedy for an Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1.1 and 3.1.2, the City shall be entitled to (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Owner the applicable amount of Liquidated Damages as provided by Section 1.3.11.

**3.6.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES.** UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 3.3.1, THE CITY AND OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH SECTION 1.3.11 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 1.3.11, WHICH OWNER SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

\_\_\_\_\_  
Initials of Authorized  
City Representative

\_\_\_\_\_  
Initials of Authorized  
Owner Representative

#### **ARTICLE 4. GENERAL TERMS**

**4.1 Tax Consequences.** Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement

and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

**4.2 Rights Not Granted Under Covenant Agreement.** This Covenant Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 *et seq.* This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City concerning the Sales Office, Owner's Sales Activities or any other project, development, or construction by the Owner in the City. This Covenant Agreement does not, and shall not be construed to, exempt Owner from the application and/or exercise of the City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

**4.3 Consent.** Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

**4.4 Notices and Demands.** All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Article 1, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

**4.5 Nonliability of Officials and Employees.** No board member, official, contractor, consultant, attorney or employee of the City shall be personally liable to Owner, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Covenant Agreement. No board member, officer, contractor, consultant, attorney or employee of the Owner shall be personally liable to the City, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the Owner, or for any amount which may become due to the City or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

**4.6 Conflict of Interests.** No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

**4.7 Pledge or Hypothecation of Covenant Payments.** Owner may assign any Covenant Payment(s) due in accordance with the terms of this Covenant Agreement (but not any other right or obligation of this Covenant Agreement) upon thirty (30) days' prior written notice to City as collateral for any loan or financing obtained by the Owner in connection with the Sales Office; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

**4.8 Entire Agreement; Good Faith Negotiations.** This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement.

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement. In any action or proceeding to interpret and/or enforce this Covenant Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Covenant Agreement to ascertain and give effect to the intent of the Parties hereto.

**4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes.** Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third-parties; third-party litigation; acts of a public enemy; initiative or referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria (except those imposed or enacted by the City); epidemics; quarantine restrictions; and freight embargoes (collectively, "**Enforced Delays**") provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Sales Office.

**ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR**

**IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.**

**OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.**

**OWNER'S INITIALS \_\_\_\_\_**

**4.10 Attorneys' Fees.** In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 4.10, "Costs" shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third-party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

**4.11 Amendments to This Covenant Agreement.** Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Owner. The City Manager is authorized on behalf of the City to approve and execute minor amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Owner, not to exceed ninety (90) days in the aggregate.

**4.12 Addition of Affiliates.** At such time as an Affiliate of Owner desires to locate in the City of Ontario, Owner shall request approval in writing from the City to locate the Affiliate in the City of Ontario and have any sales tax generated by the Affiliate included in the Sales Tax Revenues attributable to Owner for calculation of the Covenant Payment. Said written request shall be submitted to the City Manager for review and consideration by the City Council, following any legally required noticing and public hearings. Said review shall be in the City's sole and unfettered discretion. As condition precedent to the City consideration of the request, Owner and the Affiliate shall make and attest to all representation and warranties required by this Agreement, including but not limited to that inclusion of the Affiliate in this Agreement or the

implementation thereof will not violate Government Code Section 53084.5. Additionally, City shall only make a Covenant Payment to Owner. Owner shall be prohibited from sharing the Covenant Payment with Affiliate and Affiliate shall be prohibited from requesting the City enter into a separate Operating Covenant Agreement with Affiliate directly. City shall have no liability to Affiliate for the distribution of Covenant Payments.

**4.13 Jurisdiction and Venue.** Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 4.12 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

**4.14 Interpretation.** The City and Owner acknowledge that this Covenant Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Covenant Agreement. In any action or proceeding to interpret or enforce this Covenant Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Covenant Agreement to determine and give effect to the intention of the Parties.

**4.15 Counterpart Originals; Integration.** This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

**4.16 No Waiver.** Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

**4.17 Successors and Assigns.** The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Sales Office without the express written consent

of the City, which shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve of such a sale, transfer, conveyance or assignment of the Owner's interest in the Property, the City shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Sales Office, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Sales Office or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Sales Office. Notwithstanding anything to the contrary contained in this Covenant Agreement, however, Owner may assign, without the City's consent, this Covenant Agreement, its interest in the Property and/or the Sales Office to any assignee provided that: (a) such assignment is pursuant to a sale of all or substantially all of Owner's assets; and (b) the applicable assignee has a credit rating (as determined by Moody's Investor Service) equal to or better than Owner's as of the time of the Effective Date. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of Owner under this Covenant Agreement.

**4.18 No Third-Party Beneficiaries.** The performance of the respective obligations of the City and Owner under this Covenant Agreement are not intended to benefit any party other than the City or Owner, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

**4.19 No Effect on Eminent Domain Authority.** Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's or City's eminent domain powers with respect to the Property, the Sales Office, or any other property owned by Sales Office.

**4.20 Warranty Against Payment of Consideration for Covenant Agreement.** Owner warrants that it has not paid or given, and will not pay or give, any third-party any money or other consideration for obtaining this Covenant Agreement. Third-parties, for the purposes of this Section 4.19, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

**4.21 Severability.** The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

**4.22 Further Acts and Releases.** The City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

**4.23 Estoppels.** At the request of Owner, the City shall promptly execute and deliver to Owner or such holder a written statement of the City as to any of the following matters as to which Owner or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Owner pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Owner pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Owner pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Computation Quarter; (v) if the City has determined that Owner is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Owner to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Owner hereunder as to which Owner or such holder may reasonably inquire. The form of any estoppel letter shall be prepared by Owner or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Owner. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

**4.24 Indemnity.** Owner shall defend (using Counsel of the City's choosing), indemnify and hold harmless the City, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Agreement or the functions or operations of the Sales Office (other than to the extent arising as a result of the City's active negligence or willful misconduct). The City shall fully cooperate in the defense of any such actions and upon written request of the Owner shall provide such documents and records that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Agreement shall cease except for Owner's obligation of indemnity owed to the City as provided in this Section 4.24. For purposes of clarification, should Owner exercise its termination right as provided in this Section 4.24, the same shall not be considered a Default and the City shall have no claims against Owner for liquidated damages.

**4.25 State of California Legislation Impact on Covenant Payment.** Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise payable to the City. Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact

the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Owner agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement.

**[Signatures on the following pages]**

**SIGNATURE PAGE TO THE  
CONCRETE HOLDING COMPANY OF CALIFORNIA, INC.  
OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO  
a California municipal corporation

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

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John Brown  
City Attorney

**SIGNATURE PAGE TO THE  
CONCRETE HOLDING COMPANY OF CALIFORNIA, INC.  
OPERATING COVENANT AGREEMENT**

CONCRETE HOLDING COMPANY OF  
CALIFORNIA, INC.,  
a Delaware Corporation

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

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

# CITY OF ONTARIO

Agenda Report  
December 18, 2018

SECTION:  
ADMINISTRATIVE REPORTS/  
DISCUSSION/ACTION

**SUBJECT: A RESOLUTION AUTHORIZING THE ISSUANCE OF SPECIAL TAX BONDS FOR COMMUNITY FACILITIES DISTRICT NO. 25 (PARK PLACE FACILITIES PHASE II)**

**RECOMMENDATION:** That the City Council adopt a resolution authorizing the issuance of special tax bonds for Community Facilities District No. 25 (Park Place Facilities Phase II). The resolution:

- (A) Authorizes the issuance of special tax bonds for public improvements required to facilitate the development of the Park Place Facilities Phase II project;
- (B) Approves the forms of the Indenture of Trust, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement;
- (C) Authorizes a negotiated sale of the special tax bonds to Stifel, Nicolaus & Company, Incorporated (the "Underwriter") in accordance with the terms of the Bond Purchase Agreement; and
- (D) Authorizes the execution of the Indenture of Trust, the Bond Purchase Agreement, the Continuing Disclosure Agreement, and the Preliminary Official Statement by the City Manager, or his designee.

**COUNCIL GOALS: Operate in a Businesslike Manner**

**Focus Resources in Ontario's Commercial and Residential Neighborhoods**

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

**Ensure the Development of a Well Planned, Balanced and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** The use of Mello-Roos financing for public facilities in the residential development of the Park Place Facilities Phase II project is estimated to generate approximately

**STAFF MEMBER PRESENTING:** Mark Alvarado, Interim Executive Director, Finance

Prepared by: Bob Chandler  
Department: Management Services

City Manager Approval: 

Submitted to Council/O.H.A. 12/18/2018

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

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

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

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\$9 million, based on current market interest rates, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. The resolution authorizing the issuance of special tax bonds for Community Facilities District No. 25 (“District”) limits the principal amount of the bonds to \$10 million. The City expects the bonds to be sold no later than February of 2019. Since Mello-Roos bonds are not a direct obligation of the City, and are paid from special taxes levied on each taxable parcel in the district, there is no General Fund impact from the issuance of Mello-Roos bonds.

**BACKGROUND:** The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public infrastructure facilities. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting a resolution declaring the City’s intention to establish a community facilities district and levy special taxes, and a resolution to issue bonds.

On December 6, 2016, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of the District with the adoption of Resolution No. 2016-119, declaring the City’s intention to establish the District and to authorize the levy of special taxes. On January 17, 2017, the City Council adopted Resolution No. 2017-003 establishing the formation of the District and Resolution No. 2017-004 deeming it necessary to incur bonded indebtedness. Upon a successful property owner election, the City Council adopted Ordinance No. 3067 on February 7, 2017, authorizing the levy of special taxes for the District to finance public improvements related to the Park Place Facilities Phase II project. The Park Place Facilities Phase II project addresses the residential development of approximately 49 gross acres located East of Archibald Avenue, west of Celebration Avenue, south of Parkview Street and north of Merrill Avenue. At build out, the development is projected to include 253 single-family units.

The proposed resolution references several bond documents and other matters related to the proposed issuance of bonds for the District. These documents are listed below and are on file with the Records Management Department.

- Indenture of Trust
- Bond Purchase Agreement
- Continuing Disclosure Agreement
- Preliminary Official Statement

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE ISSUANCE OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 25 (PARK PLACE FACILITIES PHASE II) SPECIAL TAX BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$10,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A BOND PURCHASE AGREEMENT AND A CONTINUING DISCLOSURE AGREEMENT, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has formed the City of Ontario Community Facilities District No. 25 (Park Place Facilities Phase II) (the "Community Facilities District") under the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, the Community Facilities District is authorized under the Act to levy special taxes (the "Special Taxes") to pay for the costs of certain public facilities (the "Facilities") and to issue bonds payable from the Special Taxes; and

WHEREAS, in order to provide funds to finance certain of the Facilities, the Community Facilities District proposes to issue its City of Ontario Community Facilities District No. 25 (Park Place Facilities Phase II) Special Tax Bonds, Series 2019 (the "Series 2019 Bonds"), in the aggregate principal amount of not to exceed \$10,000,000; and

WHEREAS, in order to provide for the authentication and delivery of the Series 2019 Bonds, to establish and declare the terms and conditions upon which the Series 2019 Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Community Facilities District proposes to enter into an Indenture with Zions Bancorporation, National Association, as trustee (the "Trustee") (such Indenture, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Indenture"); and

WHEREAS, Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), has presented the Community Facilities District with a proposal, in the form of a Bond Purchase Agreement, to purchase the Series 2019 Bonds from the Community Facilities District (such Bond Purchase Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Purchase Agreement"); and

WHEREAS, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") requires that, in order to be able to purchase or sell the Series

2019 Bonds, the underwriter thereof must have reasonably determined that the Community Facilities District has, or one or more appropriate obligated persons have, undertaken in a written agreement or contract for the benefit of the holders of the Series 2019 Bonds to provide disclosure of certain financial information and certain listed events on an ongoing basis; and

WHEREAS, in order to cause such requirement to be satisfied, the Community Facilities District desires to enter into a Continuing Disclosure Agreement with the Trustee (such Continuing Disclosure Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Continuing Disclosure Agreement"); and

WHEREAS, a form of the Preliminary Official Statement to be distributed in connection with the public offering of the Series 2019 Bonds has been prepared (such Preliminary Official Statement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the "Preliminary Official Statement"); and

WHEREAS, there have been prepared and submitted to this meeting forms of:

- (a) the Indenture;
- (b) the Purchase Agreement;
- (c) the Continuing Disclosure Agreement; and
- (d) the Preliminary Official Statement; and

WHEREAS, Harris Realty Appraisal has prepared and provided to the Community Facilities District an appraisal report, dated October 26, 2018 (the "Appraisal"), providing an opinion of value of the property in the Community Facilities District, which has been submitted to this meeting; and

WHEREAS, Section 5852.1 of the California Government Code requires that the City Council obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the Series 2019 Bonds, good faith estimates of (a) the true interest cost of the Series 2019 Bonds, (b) the sum of all fees and charges paid to third parties with respect to the Series 2019 Bonds, (c) the amount of proceeds of the Series 2019 Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the Series 2019 Bonds, and (d) the sum total of all debt service payments on the Series 2019 Bonds calculated to the final maturity of the Series 2019 Bonds plus the fees and charges paid to third parties not paid with the proceeds of the Series 2019 Bonds; and

WHEREAS, in compliance with Section 5852.1 of the California Government Code, the City Council has obtained from CSG Advisors Incorporated, as the Community Facilities District's municipal advisor, in consultation with the Underwriter,

the required good faith estimates and such estimates are disclosed and set forth in Exhibit A attached hereto; and

WHEREAS, the Community Facilities District desires to proceed to issue and sell the Series 2019 Bonds and to authorize the execution of such documents and the performance of such acts as may be necessary or desirable to effect the offering, sale and issuance of the Series 2019 Bonds; and

WHEREAS, the City Council is the legislative body of the Community Facilities District; and

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. Subject to the provisions of Section 3 hereof, the issuance of the Series 2019 Bonds, in an aggregate principal amount of not to exceed \$10,000,000, on the terms and conditions set forth in, and subject to the limitations specified in, the Indenture, be and the same is hereby authorized and approved. The Series 2019 Bonds shall be dated, shall bear interest at the rates, shall mature on the dates, shall be subject to call and redemption, shall be issued in the form and shall be as otherwise provided in the Indenture, as the same shall be completed as provided in this Resolution.

SECTION 3. The Indenture, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City, the Assistant City Manager of the City, the Executive Director of Finance of the City, the Management Services Director of the City, and such other officer or employee of the City as the City Manager may designate (the "Authorized Officers") is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Indenture in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Indenture by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not authorize an aggregate principal amount of Series 2019 Bonds in excess of \$10,000,000, shall not result in a final maturity date of the Series 2019 Bonds later than September 1, 2050, and shall not result in a true interest cost for the Series 2019 Bonds in excess of 6.00%.

SECTION 4. The Purchase Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Purchase Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer

executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Purchase Agreement by such Authorized Officer; provided, however, that such changes, insertions and omissions shall not result in an aggregate underwriter's discount (not including any original issue discount) from the principal amount of the Series 2019 Bonds in excess of 1.50% of the aggregate principal amount of the Series 2019 Bonds. The City Council hereby finds and determines that the sale of the Series 2019 Bonds at negotiated sale as contemplated by the Purchase Agreement will result in a lower overall cost.

SECTION 5. The Continuing Disclosure Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute and deliver the Continuing Disclosure Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Continuing Disclosure Agreement by such Authorized Officer.

SECTION 6. The Preliminary Official Statement, in substantially the form presented to this meeting and made a part hereof as though set forth in full herein, with such changes, insertions and omissions therein as may be approved by an Authorized Officer, be and the same is hereby approved, and the use of the Preliminary Official Statement in connection with the offering and sale of the Series 2019 Bonds is hereby authorized and approved. The Authorized Officers are each hereby authorized to certify on behalf of the Community Facilities District that the Preliminary Official Statement is deemed final as of its date, within the meaning of Rule 15c2-12 (except for the omission of certain final pricing, rating and related information as permitted by Rule 15c2-12).

SECTION 7. The preparation and delivery of a final Official Statement (the "Official Statement"), and its use in connection with the offering and sale of the Series 2019 Bonds, be and the same is hereby authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement, with such changes, insertions and omissions as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution and delivery thereof. Each of the Authorized Officers is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the Community Facilities District, to execute the final Official Statement and any amendment or supplement thereto.

SECTION 8. Based upon the property values within the Community Facilities District reported in the Appraisal and the value-to-lien information set forth in the Preliminary Official Statement, the City Council, for purposes of Section 53345.8 of the Act, hereby finds and determines that the value of the real property that would be subject to the Special Tax to pay debt service on the Series 2019 Bonds will be at least three times the principal amount of the Series 2019 Bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to the Act on property within the Community Facilities District or a special assessment levied on property within the Community Facilities District.

SECTION 9. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 10. 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 18<sup>th</sup> day of December 2018.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 18, 2018 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018-    duly passed and adopted by the Ontario City Council at their regular meeting held December 18, 2018.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

## EXHIBIT A

### GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Series 2019 Bonds in accordance with Section 5852.1 of the California Government Code. Such good faith estimates have been provided to the Community Facilities District by CSG Advisors Incorporated, the Community Facilities District's municipal advisor (the "Municipal Advisor"), in consultation with Stifel, Nicolaus & Company, Incorporated, the underwriter.

*Principal Amount.* The Municipal Advisor has informed the Community Facilities District that, based on the Community Facilities District's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Series 2019 Bonds to be sold is \$8,115,000 (the "Estimated Principal Amount"), which excludes approximately \$570,000 of net premium estimated to be generated based on current market conditions. Net premium is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for such bonds is higher than the face value of such bonds.

*True Interest Cost of the Series 2019 Bonds.* The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2019 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Series 2019 Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Series 2019 Bonds, is 4.52%.

*Finance Charge of the Series 2019 Bonds.* The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2019 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Series 2019 Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Series 2019 Bonds), is \$375,000.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2019 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the Community Facilities District for sale of the Series 2019 Bonds, less the finance charge of the Series 2019 Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Series 2019 Bonds, is \$7,745,000.

*Total Payment Amount.* The Municipal Advisor has informed the Community Facilities District that, assuming that the Estimated Principal Amount of the Series 2019 Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the Community Facilities District will make to pay debt service

on the Series 2019 Bonds, plus the finance charge for the Series 2019 Bonds, as described above, not paid with the proceeds of the Series 2019 Bonds, calculated to the final maturity of the Series 2019 Bonds, is \$16,000,000, which excludes any reserves or capitalized interest funded or paid with proceeds of the Series 2019 Bonds (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only and are based on market conditions prevailing at the time of preparation of such estimates. The actual principal amount of the Series 2019 Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the sale of the Series 2019 Bonds being different than the date assumed for purposes of such estimates, (b) the actual principal amount of Series 2019 Bonds sold being different from the Estimated Principal Amount, (c) the actual amortization of the Series 2019 Bonds being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of sale of the Series 2019 Bonds being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Community Facilities District's financing plan, or a combination of such factors. The actual date of sale of the Series 2019 Bonds and the actual principal amount of Series 2019 Bonds sold will be determined by the Community Facilities District based on the timing of the need for proceeds of the Series 2019 Bonds and other factors. The actual interest rates borne by the Series 2019 Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Series 2019 Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the Community Facilities District.