

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
SEPTEMBER 4, 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 Valencia

INVOCATION

Pastor Pete Edwardson, Calvary Baptist Church

PUBLIC COMMENTS

6:30 p.m.

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

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

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

SPECIAL CEREMONIES

“STORMREADY” RECOGNITION BY THE NATIONAL WEATHER SERVICE

That the City Council accept certification from the National Weather Service in recognition of the City of Ontario as a “StormReady” Community.

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of August 7, 2018, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills July 1, 2018 through July 14, 2018 and **Payroll** July 1, 2018 through July 14, 2018, when audited by the Finance Committee.

3. CONSIDERATION OF A CONSENT, VERIFICATION, AND ESTOPPEL CERTIFICATE PERTAINING TO WILLIAMSON ACT CONTRACTS FOR CERTAIN PROPERTIES LOCATED SOUTH OF EUCALYPTUS AVENUE, EAST OF GROVE AVENUE, AND WEST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL

That the City Council approve the Consent, Verification and Estoppel Certificate and authorize the City Manager to execute the document.

4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18937 LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND LA AVENIDA DRIVE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18937 located at the southeast corner of Archibald Avenue and La Avenida Drive within The Avenue Specific Plan area.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18937, LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND LA AVENIDA DRIVE.

5. RECOGNITION OF SEPTEMBER 2018 AS ONTARIO PREPAREDNESS MONTH

That the City Council recognize the month of September 2018 as Ontario Preparedness Month in the City of Ontario and invite the public to attend the City's "Ontario Preparedness Month" events in September.

6. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN)

That the City Council consider and adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 42 (West Haven).

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. 42 (WEST HAVEN).

7. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 43 (PARK PLACE FACILITIES PHASE IV)

That the City Council consider and adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV).

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. 43 (PARK PLACE FACILITIES PHASE IV).

8. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA17-003) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19738 (FILE NO. PMTT17-011). THE PROJECT SITE IS BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, CUCAMONGA CREEK CHANNEL TO THE EAST, MERRILL AVENUE TO THE SOUTH, AND CARPENTER AVENUE TO THE WEST, LOCATED WITHIN THE BUSINESS PARK (PA-1) AND GENERAL INDUSTRIAL (PA-2) LAND USE DISTRICTS OF THE WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN (APNS: 0218-221-09, 0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13 AND 0218-271-18)

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA17-003, on file with the Records Management Department) between the City of Ontario and Ontario Land Ventures, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 19738 (File No. PMTT17-011).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA17-003) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19738 (FILE NO. PMTT17-011). THE PROJECT SITE IS BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, CUCAMONGA CREEK CHANNEL TO THE EAST, MERRILL AVENUE TO THE SOUTH, AND CARPENTER AVENUE TO THE WEST, LOCATED WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0218-221-09, 0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13 AND 0218-271-18).

9. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA17-002) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20081 (FILE NO. PMTT17-003) TO SUBDIVIDE 44.98 ACRES OF LAND INTO 76 NUMBERED LOTS AND 62 LETTERED LOTS FOR RESIDENTIAL AND COMMERCIAL USES, PUBLIC/PRIVATE STREETS, LANDSCAPE NEIGHBORHOOD EDGES AND COMMON OPEN SPACE PURPOSES FOR A PROPERTY LOCATED ON THE NORTHEAST CORNER OF ONTARIO RANCH ROAD AND HAVEN AVENUE, WITHIN THE MIXED USE DISTRICT PLANNING AREA 6A (REGIONAL COMMERCIAL AND STAND ALONE RESIDENTIAL OVERLAY) OF THE RICH HAVEN SPECIFIC PLAN (APNS: 0218-211-02 AND 0218-211-05)

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA17-002, on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, to establish the terms for the development of Tentative Tract Map 20081 (File No. PMTT17-003).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20081 (FILE NO. PMTT17-003) TO SUBDIVIDE 44.98 ACRES OF LAND INTO 76 NUMBERED LOTS AND 62 LETTERED LOTS FOR RESIDENTIAL AND COMMERCIAL USES, PUBLIC/PRIVATE STREETS, LANDSCAPE NEIGHBORHOOD EDGES AND COMMON OPEN SPACE PURPOSES FOR A PROPERTY LOCATED ON THE NORTHEAST CORNER OF ONTARIO RANCH ROAD AND HAVEN AVENUE, WITHIN THE MIXED USE DISTRICT PLANNING AREA 6A (REGIONAL COMMERCIAL AND STAND ALONE RESIDENTIAL OVERLAY) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 0218-211-02 AND 0218-211-05.

10. PURCHASE OF WATER SYSTEM MATERIALS

That the City Council approve and authorize the award of Bid No. 980 to S & J Supply Company Inc. of Santa Fe Springs, California, in an estimated amount of \$250,000 and United Waterworks of Santa Ana, California, in an estimated amount of \$100,000 for the procurement of miscellaneous materials and supplies on an as-needed basis for water system repairs for Fiscal Year 2018-19.

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
September 4, 2018

SECTION:
SPECIAL CEREMONIES

SUBJECT: "STORMREADY" RECOGNITION BY THE NATIONAL WEATHER SERVICE

RECOMMENDATION: That the City Council accept certification from the National Weather Service in recognition of the City of Ontario as a "StormReady" Community.

COUNCIL GOALS: Maintain the Current High Level of Public Safety
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities


FISCAL IMPACT: None.

BACKGROUND: The National Weather Service recognizes communities who have taken extraordinary steps to prepare and protect against vulnerability to extreme weather events. 98% of all Presidentially declared disasters are weather related, leading to over 500 deaths per year and \$15 billion in damage. "StormReady" helps community leaders and emergency managers strengthen local safety programs. "StormReady" communities, cities, counties, Indian nations, universities and colleges, military bases, government sites, commercial enterprises and other groups are better prepared to save lives from the onslaught of severe weather through advanced planning, education and awareness. No community is storm proof, but "StormReady" can help communities save lives.

The City of Ontario has embraced this program as it supports the City Council's goal of Maintaining the Current High Level of Public Safety and has met all criteria for recognition as a "StormReady" Community. To be recognized as "StormReady", the City of Ontario has met the following criteria:

- Established a 24-hour warning point and emergency operations center
- Have more than one way to receive severe weather warnings and forecasts and to alert the public
- Create a system that monitors weather conditions locally
- Promote the importance of public readiness through community seminars
- Develop a formal hazardous weather plan, which includes training severe weather spotters and holding emergency exercises.

STAFF MEMBER PRESENTING: Rob Elwell, Fire Chief

Prepared by: Anthony Coletta
Department: Fire
City Manager Approval: 

Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: CONSIDERATION OF A CONSENT, VERIFICATION, AND ESTOPPEL CERTIFICATE PERTAINING TO WILLIAMSON ACT CONTRACTS FOR CERTAIN PROPERTIES LOCATED SOUTH OF EUCALYPTUS AVENUE, EAST OF GROVE AVENUE, AND WEST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL

RECOMMENDATION: That the City Council approve the Consent, Verification and Estoppel Certificate and authorize the City Manager to execute the document.

COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy

Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

FISCAL IMPACT: None.

BACKGROUND: Prior to November 1, 1999, the Ontario Ranch area of the City of Ontario was located within an agricultural preserve under the jurisdiction of the County of San Bernardino. The agricultural preserve was established in 1968 and provided opportunities for property owners to voluntarily enter into agricultural contracts, known as Williamson Act contracts, that assessed property taxes based on the agricultural use of the property rather than residential or commercial valuation. The Williamson Act contracts provide for a property tax reduction so long as the property is used for agricultural purposes. Property owners can discontinue the contracts by filing for "non-renewal" which results in the gradual escalation of property taxes, over a ten-year period, based on the residential or commercial land use designation of the property. Property owners also have the option of "cancelling" a contract by paying a penalty equal to 12-1/2% of the current market value of the property.

With the annexation of Ontario Ranch to the City of Ontario, all responsibilities for monitoring Williamson Act contracts was transferred from the County to the City. A complete inventory of all

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

Prepared by: Scott Murphy
Department: Development

City Manager Approval: 

Submitted to Council/O.H.A. 09/04/2018

Approved: _____

Continued to: _____

Denied: _____

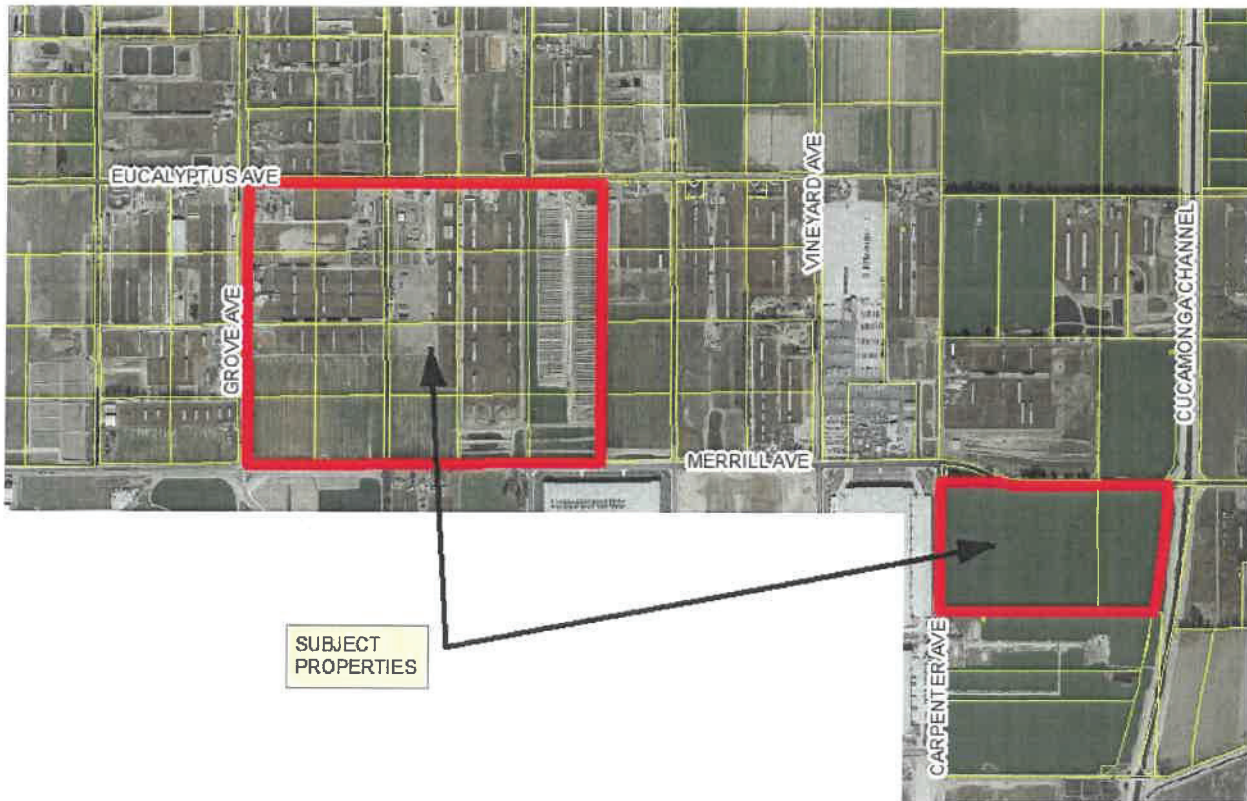
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active Williamson Act contracts was provided to the City and was used in the Environmental Impact Report prepared for the area then referred to as the New Model Colony. Since annexation, staff has been monitoring the Williamson Act contracts, including processing of contract “non-renewals” and “cancellations”.

Recently, it was brought to staff’s attention that title reports on several properties indicated that active Williamson Act contracts were present that were not reflected in the City’s inventory. These properties are generally located south of Eucalyptus Avenue, east of Grove Avenue, and west of the Cucamonga Channel (see Exhibit “A” – Location Map). In researching the contracts, staff found no information relative to active contracts. Furthermore, San Bernardino County Tax Assessor information revealed that adjacent properties under Williamson Act contracts include an item identified as “REVIEW – OPEN SPACE PROPERTY UNDER ANNUAL REVIEW”, and the tax rate charged to these properties is significantly below current market rate. In the case of the 22 parcels in question, there is no open space notation and the tax rate is clearly based off current market value (\$127,943 versus \$1,196,500 for similar sized parcels). The current market value assessment appears to have been in place for several years. Therefore, it is staff’s conclusion that the Williamson Act contract on the properties was removed and they are not subject to the provisions of the Williamson Act.

In consultation with the City Attorney’s Office and the applicant’s attorney, the attached “Consent, Verification, and Estoppel Certificate” was developed to assist in clarifying title on the properties. If approved by City Council, the certificate would be executed by the City Manager and the property owner and recorded against the properties.

Exhibit “A” – Location Map



RECORDING REQUESTED BY:

Clerk, City Council
City of Ontario

WHEN RECORDED MAIL TO:

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

CONSENT, VERIFICATION, AND ESTOPPEL CERTIFICATE

THIS CONSENT, VERIFICATION AND ESTOPPEL CERTIFICATE (this "**Certificate**") dated as of _____, 2018, is executed and delivered by the CITY OF ONTARIO, a municipal corporation ("**City**"), to and in favor of _____, a _____, and its successors and assigns ("**Owner**").

RECITALS

A. Owner is the owner of certain real property in the City is what is now known as the Ontario Ranch area (formerly the New Model Colony), which for the purposes of the Certificate, is divided into two properties: the approximately 56 acre **Phase I Property** consisting of two parcels, APNs 0218-311-11 & 0218-292-05, and the approximately 189 acre **Phase II Property** consisting of twenty parcels, APNs 1054-111-01, 02; 1054-121-01, 02; 1054-131-01, 02; 1054-141-01, 02; 1054-151-01; 1054-161-01; 1054-201-01; 1054-211-01, 02; 1054-221-01, 02; 1054-331-01, 02; 1054-341-01, 02; 1054-351-01.

B. On or about May 23, 1968, the previous owners of the Phase I Property and the Phase II Property entered into essentially identical contracts pursuant to the Williamson Act (California Government Act § 51200 *et seq.*) with the County of San Bernardino ("**County**"), both entitled "Land Conservation Agreement," recorded with the County of San Bernardino Recorder's Office at Book 6983, Page 383 and Book 6983, Page 423, respectively. These two contracts are attached hereto, along with subsequent amendments, are attached to this Certificate as Exhibit 1 and Exhibit 2, respectively, and are collectively referred to herein as the "**Contracts**". The Contracts were entered into as part of the County's establishment of the Agricultural Preserve.

C. In 1994, the County of San Bernardino Local Agency Formation Commission ("**LAFCO**") approved placing 8,200 acres of the Agriculture Preserve area, including the Phase I and Phase II Property, into the City's sphere of influence. In 1998, the City certified an environmental impact report ("**EIR**") analyzing the impacts of future development of these 8,200 acres with 31,188 dwelling units.

D. In May 1999, LAFCO approved the annexation of this entire 8,200 acre area, which was approved and officially annexed by the City on July 12, 1999, which became known as the New Model Colony (now Ontario Ranch). The City's annexation took the 8,200 acres out of the Agricultural Preserve and rezoned the entire area "Specific Plan," which contemplates the development of residential, public, commercial, industrial and specialty uses, not agricultural uses. As part of this annexation, the City expressly succeeded all rights, duties and powers of the County for all existing Williamson Act contracts applicable to all properties annexed by the City, including both the Phase I and Phase II Property.

E. Both the City and Owner agree that the by the terms of the Contracts, the annexation of the Phase I and Phase II Property into the City and the City's approval of the New Model Colony development – which removed the Phase I and Phase II Property from the County's Agricultural Preserve – the Contracts were not renewed and therefore have expired, even though a notice of nonrenewal was never recorded, apparently as the result of inadvertence.

F. All twenty-two (22) parcels that constitute the Phase I Property and the Phase II Property are currently being assessed by County of San Bernardino Tax Assessor ("**Assessor**") at their unrestricted fair market value, and have been so assessed for many years. Properties subject to Williamson Act contracts bear a specific code in the Assessor's records – "All Open Space Contracts (Williamson Act)". None of the Phase I or Phase II Properties bear such a code.

G. The City and Owner both wish to enter into this Certificate to correct any historical inadvertence with respect to recording, and confirm that both Contracts have expired and no longer have any force and effect.

NOW, THEREFORE, for good and valuable consideration, including the fact that the Phase I and Phase II property have both long been assessed at their unrestricted fair market value and have paid property taxes based on the same, the receipt and sufficiency of which is hereby acknowledged and confessed, the City hereby represents and warrants to, and covenants and agrees with, Owner as follows:

1. By virtue of its Resolution No. 2647, the City succeeded the County as the party to all Williamson Act contracts applicable to property in the New Model Colony (now Ontario Ranch) area, specifically including the Contracts.
2. The City's July 12, 1999 annexation of the Phase I Property and Phase II Property disestablished the Agricultural Preserve, at least with respect to the Phase I Property and the Phase II Property, and was equivalent to a notice of nonrenewal under the Williamson Act and the terms of the Contracts.
3. The Contracts currently appearing on title for the Phase I Property and Phase II Property and attached hereto as Exhibit 1 and Exhibit 2,

respectively (as amended), have expired, and no longer have any force and effect.

4. The Phase I Property and Phase II Property have long been assessed based on their unrestricted fair market value, and accordingly, any restriction on the use of the Phase I Property and Phase II Property based on the Contracts would be inequitable, as Owner is not, and has not been, receiving any benefit from the Contracts, which the Assessor has long treated as expired.
5. This Certificate shall inure to the benefit of Owner and its successors and assigns and shall be binding on the City and its successors and assigns.

IN WITNESS WHEREOF, City and Owner have executed this Certificate as of the date first written above.

City of Ontario,
A municipal corporation

By: _____
Scott Ochoa, City Manager

Owner

By: _____

EXHIBIT 1:

Document follows this page

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BOOK 6983 PAGE 383

R.

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RECORDED AT REQUEST
OF SUPERVISORS

BOOK 6983 PAGE 383

BOOK 6983 PAGE 383

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OFFICIAL RECORDS
SAN BERNARDINO CO. CALIF.

NO. 111
72

Paul R. ...
COUNTY RECORDER

LAND CONSERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 29th day of
February, 1968, by and between

DAVE AKKERMAN AND ANGELINA A. AKKERMAN

(All owners, including multiple owners, and spouses, must be entered above. If unmarried, so indicate.) hereinafter referred to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER possesses certain real property located within the COUNTY, which property is presently devoted to agricultural and compatible uses and is particularly described in Exhibit "A", attached hereto and made a part hereof, and

WHEREAS, said property is located in an agricultural preserve heretofore established by COUNTY by Resolution No. 2/20/68, and

WHEREAS, both OWNER and COUNTY desire to limit the use of said property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of such lands from agricultural uses, recognizing that such land has definite public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, esthetic and economic asset to the COUNTY to maintain the agricultural economy of the COUNTY and the State of California, and

WHEREAS, both OWNER and COUNTY intend that the terms, conditions and restrictions of this Agreement are substantially similar to contracts authorized by the California Land Conservation Act of 1965 so as to be an enforceable restriction under the provisions of California Revenue and Taxation Code Section 422; and

WHEREAS, it is the intent of COUNTY and OWNER that the continued existence of the within Agreement is made dependent upon the existence of legislation or other law implementing Article XXVIII of the California Constitution so the effect of the terms, conditions and restrictions of the Agreement on property values for taxation purposes is as favorable to OWNER as the legislation existing on the last renewal date.

NOW, THEREFORE, the parties in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. California Land Conservation Act of 1965 - The within Agreement is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code commencing with Section 51200) and is subject to all the provisions, including any amendments thereto which may be enacted, which are specifically applicable to Article 3.5 Agreements.
2. Agricultural and Compatible Uses - During the term of this Agreement or any renewals thereof, the above described land shall not be used for any purpose, other than the production of agricultural commodities for commercial purposes and compatible uses as listed in the resolution establishing the preserve within which the land is located, a copy of such list is being attached hereto and marked as Exhibit "B".
3. Additional Agricultural Uses - The Board of Supervisors of COUNTY may from time to time and during the term of this Agreement or any extensions thereof, by resolution add to those uses listed in the resolution establishing the preserve within which the land is located; provided, however, said Board shall not eliminate, without written consent of OWNER, a compatible use during the term of this Agreement or any renewals thereof.
4. Condemnation - Upon the filing of any action in eminent domain for the condemnation of the fee title of any land described herein or of less than a fee interest which will prevent the land being used for any authorized use, or upon the acquisition in lieu of condemnation of the fee title of any land described herein or of less than a fee interest which will prevent the land being used for any authorized use, this Agreement is null and void upon such filing or acquisition as to the land so condemned or so acquired and the condemning agency shall proceed as if the Agreement never existed.
5. Term of Agreement - This Agreement shall be effective commencing on February 29, 1968, and shall remain in effect for a period ending December 31, 1977, and during such renewals of this Agreement.

This Agreement shall be automatically renewed for a period of one year on the first day of each January, unless notice of non-renewal is given pursuant to Government Code Sections 51245 et seq. Upon receipt of notice of non-renewal by the other party this Agreement shall remain in effect for the balance of the term remaining since the original execution or the last renewal of this Agreement, as the case may be. A notice of non-renewal irrespective of which party gives the notice shall be recorded by the COUNTY. A copy of the recorded notice of non-renewal shall be forwarded by COUNTY to the California Director of Agriculture. Under no circumstances shall a notice of renewal be required of either party to effectuate the automatic renewal option of this paragraph.
6. No Payments by County - OWNER shall not receive any payment from COUNTY in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of the within Agreement is the substantial public benefit to be derived therefrom and the advantage which will accrue to OWNER as a result of the effect on the method of determining the assessed value of land described herein and any reduction thereon due to the imposition of the limitations on its use contained herein.

7. Successors in Interest - The within Agreement shall run with the land described herein, and shall be binding upon the heirs, successors and assigns of OWNER.

8. Cancellation - Except as provided in Clause 9, below, this Agreement may be cancelled as to any or all of the land described in Exhibit "A" by mutual agreement of COUNTY and OWNER after public hearing has been held in accordance with the provisions of Section 51284 of the Government Code. Neither party hereto can cancel this agreement unilaterally. To be effective a mutual agreement to cancel must be based on one of the following: (a) The cancellation is not inconsistent with the purposes of the California Land Conservation Act of 1965; (b) the cancellation is in the public interest; or (c) the cancellation is in accordance with clause 9, below. The Assessor of the County of San Bernardino shall revalue the land to which the cancellation applies as soon as possible after the cancellation, use the cancellation date as the valuation date, and apply the County's announced ratio to the full cash value to determine the assessed value. The assessed value shall be subject to equalization pursuant to Section 1604 of the Revenue and Taxation Code. When the assessed valuation becomes final, the OWNER shall pay COUNTY, as deferred taxes, an amount equal to 50% (fifty percentum) of the new assessed valuation of the property. If after the effective date of the cancellation, the announced County ratio of assessed value to full cash value is changed, the percentage payment to the County shall be changed so that no greater percentage of full cash value will be paid. IF, at the date of the cancellation, the Agreement previously has been subject to a notice of non-renewal, the amount due shall be reduced by the proportion that the whole number of years the Agreement remained in effect measured from the date the notice of non-renewal was given bears to the number of tax lian dates, included in the term covered by Clause 5.

9. Restrictive Law Alteration - This Agreement may be cancelled by mutual agreement of COUNTY and OWNER without payments or public hearing if it is replaced by an enforceable restriction authorized by Article XXVIII of the California Constitution or whenever there is no operative legislation or other law implementing said Article at the time the cancellation is requested by OWNER.

10. Cancellation Recordation - The notice of cancellation shall be recorded with the County Recorder and the California Director of Agriculture and the regularity of procedures as required by this Agreement shall operate as provided in Section 51286 of the Government Code.

11. Division of Land under Agreement - In the event the land under this Agreement is divided, an agreement identical to the agreement then covering the original parcel shall be executed by OWNER on each parcel created by the division at the time of the division. Any agency making an order of division or the County which has jurisdiction shall require, as a condition of the approval of the division, the execution of the agreements provided for in this paragraph.

12. Distribution of Taxes - Upon receipt of deferred taxes payable pursuant to Clause 8, said taxes shall be distributed as provided in Section 51283(c) of the Government Code.

13. Lien or Charge upon Cancellation - Section 51283.3 of the Government Code shall be applicable to the deferred tax payments payable pursuant to Clause 8, except references to the Director of Agriculture shall be construed to refer to the Board of Supervisors of the County.

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14. Information from Owner - OWNER, upon request of COUNTY, shall provide information relating to OWNER'S obligation under this Agreement.

15. Acts of Non-Renewal by County - Removal of any land under this Agreement from an agricultural preserve either by change of boundaries of the preserve, disestablishment of the preserve or nulling and voiding of the preserve pursuant to Sections 51201.1 and 51243(b) of the Government Code shall be the equivalent of a notice of non-renewal by COUNTY for purposes of Section 422 of the Revenue and Taxation Code.

16. Termination Document Recordation - In the event of termination of this Agreement by (1) notice of non-renewal, (2) cancellation, (3) nullification by annexation or condemnation, the COUNTY shall record the appropriate documents in the County Recorder's Office and file a copy with the Director of Agriculture.

17. Annexation of Land Within One Mile - In the event that any portion of the land of the OWNER, which is included in Exhibit "A" and is within one mile of a city at the time this Agreement is executed, is subsequently annexed by such city, but such city does not affirmatively indicate its intention to succeed to all the rights, duties and powers of this Agreement, then the OWNER and such portion of the land shall be subject to a charge amounting to the differential (for the last five assessments prior to annexation, or the actual number of assessments, if less than five, during the existence of this Agreement) between the taxes as actually computed under this Agreement, and the taxes which would have been computed without the benefit of the restrictions of this Agreement.

18. Notices - Any notices required to be given hereunder or required to be given by law shall be given by United States Registered Mail, return receipt requested, and any notice to the COUNTY shall be sent to the Clerk to the Board of Supervisors of San Bernardino County, San Bernardino, California, and any notices to the OWNER shall be sent to the last known address as shown on the latest assessment roll. Such address shall be the proper address for every person in the case of multiple OWNERS.

19. Severability - It is further understood and agreed by the parties hereto that if any of these provisions shall contravene, or be invalid under any law, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

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


COUNTY OF SAN BERNARDINO

By: 
CHAIRMAN of the Board of Supervisors

SEAL

ATTEST:

V. DENNIS WARDLE, County Clerk
and ex officio Clerk of the
Board of Supervisors

By: 
Deputy

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.

On this 24th day of February, 1968, before me, DOROTHY T. WAGNER, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Daniel D. Mitchell known to me to be the Chairman of the Board of Supervisors of the County of San Bernardino that executed the within Agreement and acknowledged to me that said County of San Bernardino did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Dorothy T. Wagner
NOTARY PUBLIC in and for said County and State
DOROTHY T. WAGNER, Notary Public, in and for the County of San Bernardino, State of California. My Commission Expires August 8, 1969

NOTE: All owners, including multiple owners, and spouses, must execute this Agreement. All signatures must be notarized, either separately or collectively. Please obtain the certification sheets necessary for the signatures and attach them after this page.

OWNER(S):

Daniel D. Mitchell
Angela A. Abbeerman

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.

On this 26th day of FEBRUARY, 19 68, before me,
EDITH D. SMITH, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn, personally
appeared _____

DAVE AKKERMAN AND ANGELINA A. AKKERMAN

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.



Edith D. Smith
NOTARY PUBLIC in and for said
County and State
Edith D. Smith

STATE OF CALIFORNIA }
COUNTY OF _____ } ss.

On this _____ day of _____, 19 _____, before
me, _____, a Notary Public in and for said County
and State, residing therein, duly commissioned and sworn, personally
appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.

NOTARY PUBLIC in and for said
County and State

(SEAL)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
218 292 05	Lot 3, Sec. 22, Tp 2 S, R 7 W, ex S 129.75 ft thereof. 39.01 Ac. M/L
218 311 06	Ptn NW 1/4 SE 1/4, Sec. 22, Tp 2 S, R 7 W, lying Wly of C/L San Bernardino County Flood Control Easement recorded in Bk 1716, pg 328, Official Records, ex S 129.75 ft thereof. 19.7 Ac. M/L.

EXHIBIT "B"

AGRICULTURAL AND
COMPATIBLE USES

The following uses are hereby determined to be agricultural and compatible uses within an agricultural preserve, and all other uses of land are prohibited therein:

- (1) Agricultural use, described as any use of land for the purpose of producing an agricultural commodity, consisting of any and all plant and animal products, for commercial purposes, provided such use is permitted by the applicable zoning and not prohibited by other law or ordinance.
- (2) A stand for display and sale of agricultural commodities produced on the premises or on other premises within the preserve.
- (3) Gas, electric, water and communication utility facilities, and public service facilities of like nature operated by a public agency or mutual water company.
- (4) Public highways.
- (5) Fire protection works and facilities.
- (6) Flood control works, including channel rectification and alteration.
- (7) Public works required for fish and wildlife enhancement and preservation.
- (8) Improvements for the primary benefit of the lands within the preserve.
- (9) State improvements described in Section 51293(d) and (e) of the Government Code.
- (10) One-family dwellings for the use only of an owner or manager of land within the agricultural preserve, or a person employed on said land, if such use is permitted by the applicable zoning, but not exceeding three (3) dwellings for each parcel of not less than 10 acres.
- (11) Farm labor camps, including temporary trailer housing, subject to the conditions of law or ordinance otherwise applicable.
- (12) Drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced.
- (13) Any use existing on the date the land is included within an agricultural preserve, but such use once discontinued for two (2) years shall not be resumed unless permitted under these rules.
- (14) Any use required to be permitted by any amendment to the California Land Conservation Act of 1965 hereafter adopted.
- (15) Any use determined to be a compatible use in all agricultural preserves by the Board of Supervisors, after public hearing on ten (10) days' published notice and such other notice, if any, as they may specify. Thereafter such use shall be deemed a compatible use in any agricultural preserve, providing that it is not inconsistent with uses listed in Paragraph (1) above.

EXHIBIT "B"

Page 1.

CERTIFICATION

Under the provisions of the Government Code 27361.7, I, Karen M. Morrison, certify under the penalty of perjury under the State of California that the illegible wording portion of this document to which this statement reads as follows:

LAND CONSERVATION AGREEMENT

RECORDED IN BOOK 6983, PAGE 383

RECORDATION DATE: February 29, 1968

PROPERTY OWNERS NAMES: Dave Akkerman and Angelina A. Akkerman

Place of Execution: Ontario, CA Date: August 22, 2018

Signature of Declarant: Karen M. Morrison

Return to
Clerk to the Board

368

RECORDER

RECORDED AT REQUEST
Board of Supervisors

BOOK 7150 PAGE 351
'68 DEC 15 AM 9:37

OFFICIAL RECORDS
SAN BERNARDINO CO. CALIF.

Fred R. Carpenter
COUNTY RECORDER

BOOK 7150 PAGE 351

NO FEE
B

NOTICE OF RENEWAL OF
LAND CONSERVATION AGREEMENT
(per Gov. Code Section 51244)

WHEREAS, a Land Conservation Agreement was made and entered into on the 23rd day of February, 1968, by and between
FRANK AARDEMA, CORNELIA AARDEMA, SYLVESTER VANDER TUIG, ARLENE J. VANDER TUIG
and the COUNTY OF SAN BERNARDINO

, and,

WHEREAS, such Land Conservation Agreement was recorded with the County Recorder of San Bernardino County on the 29th day of February, 1968, bears Document No. 657, Book No. 6983, Page No. 375; and,

WHEREAS, neither the County of San Bernardino nor the other contracting party or parties have filed Notices of Non-Renewal in accordance with California Government Code Section 51245,

NOW, THEREFORE, in compliance with the provisions of California Government Code Section 51244, the Clerk of the San Bernardino County Board of Supervisors executes and records this NOTICE OF RENEWAL OF LAND CONSERVATION AGREEMENT, which agreement was previously identified above and is incorporated herein by reference as though set forth in full, and furthermore said Clerk states that the new termination date of said Land Conservation Agreement shall be December 31, 1978, in accordance with the provisions of the Land Conservation Act, particularly Government Code Section 51244, as incorporated in said Land Conservation Agreement.

Dated: Dec. 16, 1968

V. DENNIS WARDLE, County Clerk and
ex-officio Clerk of the Board of
Supervisors of San Bernardino County,
California

By *Rena Montero*
Deputy

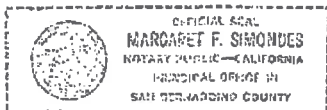
SEAL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.

On this 16th day of December, 1968, before me,
Margaret F. Simonides, A Notary Public in and for said County and State, residing herein, duly commissioned and sworn, personally appeared
Rena Montero known to me to be the
Deputy Clerk to the Board of Supervisors of San Bernardino County who executed the within Notice of Renewal of Land Conservation Agreement and acknowledged to me that she did execute the same for and on behalf of the County of San Bernardino.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)



Margaret F. Simonides
Notary Public in and for said
County and State

MARGARET F. SIMONIDES
My Commission Expires June 21, 1972

748

RECORDED AT REQUEST

BOOK 7616 PAGE 916

Board of Supervisors

1971 FEB 26 PM 12 11

BOOK 7616 PAGE 916

NO FEE D

BOOK 7616 PAGE 916
SAN BERNARDINO CO. CALIF.



AMENDMENT TO

LAND CONSERVATION AGREEMENT

THIS AMENDMENT TO THE LAND CONSERVATION AGREEMENT is made and entered into this 3rd day of February, 1971, by and between David Akkerman and Angelina A. Akkerman

See Exhibit "A" for tax parcels covered by this Amendment.
(All owners, including multiple owners, and spouses, must be entered above. If unmarried, so indicate.) hereinafter referred to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER, or OWNER'S predecessors in interest, and COUNTY executed a LAND CONSERVATION AGREEMENT on February 23, 1968 which AGREEMENT was recorded in Book 5983 page 383, in the San Bernardino County Recorder's Office on February 29, 1968 and _____, 19____, and

WHEREAS, the LAND CONSERVATION AGREEMENT, identified above, is incorporated herein and made a part hereof as though set forth in full in this AMENDMENT, and

WHEREAS, the State Board of Equalization, in conformance with the powers and duties granted to it by the Legislature in California Government Code Section 15606, has determined that Clause 8 in the covenant section of the AGREEMENT, previously identified, is not sufficiently restrictive so that the AGREEMENT is substantially similar to a CONTRACT, as defined and required by the legislation in existence at the time the AGREEMENT was executed, and

WHEREAS, OWNER, or OWNER'S predecessor, and COUNTY intended (as set forth on the first page of the AGREEMENT) "that the terms and conditions and restrictions of this Agreement are substantially similar to contracts authorized by the California Land Conservation Act of 1965 so as to be an enforceable restriction under provisions of California Revenue and Taxation Code Section 422;"

NOW THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and in the AGREEMENT AS AMENDED and the substantial benefits to be derived by OWNER and COUNTY therefrom, do hereby agree as follows:

1. Clause 8 in the covenant section of the AGREEMENT is amended to read as follows:

"8. Cancellation - Except as provided in Clause 9 of this AGREEMENT, this AGREEMENT may be cancelled as to any or all of the land if the following procedures and provisions are complied with:

a.) Cancellation must be by mutual agreement of the OWNER and the COUNTY and as a result of a request by the OWNER and approval by the Board of Supervisors of the COUNTY.

b.) There must be a public hearing as to such request for cancellation before the Board of Supervisors.

c.) A notice of the public hearing must be sent by mail to each owner in the agricultural preserve of land under agreement and there must be publication of notice pursuant to Section 6061 of the Government Code.


d.) The Board of Supervisors shall make findings that cancellation is not inconsistent with the purposes of the Land Conservation Act of 1965 and is in the public interest. - The existence of an opportunity for another use of the land shall not be sufficient reason for cancellation. A potential alternative use of the land may be considered only if there is no proximate land not subject to a Land Conservation Act contract or agreement suitable for the use to which it is proposed the subject land be put. The uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation. The uneconomic character of the existing use may be considered only if there is no reasonable or comparable agricultural use to which the land may be put.

e.) If the cancellation is approved and agreed upon, the Assessor of the County of San Bernardino shall revalue the land, without the restriction, to which the cancellation applies as soon as possible after the cancellation, use the cancellation date as the valuation date, and apply the latest assessment ratio that has been published pursuant to Section 251 of Volume 18 of the Administrative Code in order to determine the assessed value. The assessed value shall be subject to equalization pursuant to Section 1604 of the Revenue and Taxation Code. When the assessed valuation becomes final, the OWNER shall pay COUNTY, as deferred taxes, an amount equal to 50% (fifty per centum) of the new assessed valuation of the property. If after the effective date of the cancellation, the announced County ratio of assessed value to full cash value is changed, the percentage payment to the County shall be changed so that no greater percentage of full cash value will have been paid. If, at the date of the cancellation, the Agreement previously has been subject to a notice of nonrenewal, the amount due

shall be reduced by the proportion that the whole number of years the Agreement remained in effect measured from the date the notice of nonrenewal was given bears to the number of tax lien dates, included in the term covered by Clause 5 in the Agreement."

IN WITNESS WHEREOF, OWNER and COUNTY have executed this Amendment to Land Conservation Agreement on the day and year first above written.

COUNTY OF SAN BERNARDINO

BY 
CHAIRMAN of the
Board of Supervisors

ATTEST:

SEAL

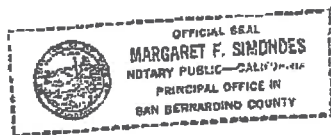
V. DENNIS WARDLE, County Clerk
and ex officio Clerk of the
Board of Supervisors

BY 
Deputy

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.

On this 25th day of February, 1971, before me, Margaret F. Simondes, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Ruben S. Argala known to me to be the Chairman of the Board of Supervisors of the County of San Bernardino that executed the within Contract and acknowledged to me that said County of San Bernardino did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Margaret F. Simondes
NOTARY PUBLIC in and for said
County and State

MARGARET F. SIMONDES
My Commission Expires June 20, 1976

NOTE: All owners, including multiple owners, and spouses, must execute this Amendment. All signatures must be notarized, either separately or collectively. Please obtain the certification sheets necessary for the signatures and attach them after this page.

OWNER(S)

David A. Johnson
Ernestine A. Johnson

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.

On this 22nd day of February, 1971, before me
Olga G. Traverso a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn, personally
appeared David Akkerman and Angelina A. Akkerman

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.



Olga G. Traverso
NOTARY PUBLIC in and for said
County and State

(SEAL)

STATE OF CALIFORNIA }
COUNTY OF _____ } ss.

On this _____ day of _____, 19____, before me
_____, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn, personally
appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.

NOTARY PUBLIC in and for said
County and State

(SEAL)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
218 292 05	Lot 3, Sec. 22, Tp 2 S, R 7 W, ex S 129.75 ft thereof. 39.01 Ac. M/L
218 311 06	Ptn NW 1/4 SE 1/4, Sec. 22, Tp 2 S, R 7 W, lying Wly of C/L San Bernardino County Flood Control Easement recorded in Bk 1716, pg 328, Official Records, ex S 129.75 ft thereof. 19.7 Ac. M/L.

CERTIFICATION

Under the provisions of the Government Code 27361.7, I, Karen M. Morrison, certify under the penalty of perjury under the State of California that the illegible wording portion of this document to which this statement reads as follows:

AMENDMENT TO LAND CONSERVATION AGREEMENT

RECORDED IN BOOK 7616, PAGE 916

RECORDATION DATE: February 3, 1971

PROPERTY OWNERS NAMES: Dave Akkerman and Angeline A. Akkerman

Place of Execution: Ontario, CA Date: August 22, 2018

Signature of Declarant: Karen M. Morrison

EXHIBIT 2:

Document follows this page

663

RECORDED AT REQUEST
BOOK 6983 PAGE 423
'68 FEB 29 PM 3:05
OFFICIAL RECORDS
SAN BERNARDINO CO. CALIF.
COUNTY RECORDER

BOOK 6983 PAGE 423

BOOK 6983 PAGE 423

LAND CONSERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 23rd day of February, 19 68, by and between

JOSEPH BORBA AND DOLEEN BORBA

(All owners, including multiple owners, and spouses, must be entered above, if unmarried, so indicate.) hereinafter referred to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER possesses certain real property located within the COUNTY, which property is presently devoted to agricultural and compatible uses and is particularly described in Exhibit "A", attached hereto and made a part hereof, and

WHEREAS, said property is located in an agricultural preserve heretofore established by COUNTY by Resolution No. 2/20/68, and

WHEREAS, both OWNER and COUNTY desire to limit the use of said property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of such lands from agricultural uses, recognizing that such land has definite public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, aesthetic and economic asset to the COUNTY to maintain the agricultural economy of the COUNTY and the State of California, and

WHEREAS, both OWNER and COUNTY intend that the terms, conditions and restrictions of this Agreement are substantially similar to contracts authorized by the California Land Conservation Act of 1965 so as to be an enforceable restriction under the provisions of California Revenue and Taxation Code Section 422; and

WHEREAS, it is the intent of COUNTY and OWNER that the continued existence of the within Agreement is made dependant upon the existence of legislation or other law implementing Article XXVIII of the California Constitution so the effect of the terms, conditions and restrictions of the Agreement on property values for taxation purposes is as favorable to OWNER as the legislation existing on the last renewal date.

. . . .

. . . .

. . . .

. . . .

NOW, THEREFORE, the parties in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. California Land Conservation Act of 1965 - The within Agreement is made and entered into pursuant to the California Land Conservation Act of 1965 (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code commencing with Section 51200) and is subject to all the provisions, including any amendments thereto which may be enacted, which are specifically applicable to Article 3.5 Agreements.

2. Agricultural and Compatible Uses - During the term of this Agreement or any renewals thereof, the above described land shall not be used for any purpose, other than the production of agricultural commodities for commercial purposes and compatible uses as listed in the resolution establishing the preserve within which the land is located, a copy of such list is being attached hereto and marked as Exhibit "B".

3. Additional Agricultural Uses - The Board of Supervisors of COUNTY may from time to time and during the term of this Agreement or any extensions thereof, by resolution add to those uses listed in the resolution establishing the preserve within which the land is located; provided, however, said Board shall not eliminate, without written consent of OWNER, a compatible use during the term of this Agreement or any renewals thereof.

4. Condemnation - Upon the filing of any action in eminent domain for the condemnation of the fee title of any land described herein or of less than a fee interest which will prevent the land being used for any authorized use, or upon the acquisition in lieu of condemnation of the fee title of any land described herein or of less than a fee interest which will prevent the land being used for any authorized use, this Agreement is null and void upon such filing or acquisition as to the land so condemned or so acquired and the condemning agency shall proceed as if the Agreement never existed.

5. Term of Agreement - This Agreement shall be effective commencing on February 29, 1968, and shall remain in effect for a period ending December 31, 1977, and during such renewals of this Agreement.

This Agreement shall be automatically renewed for a period of one year on the First day of each January, unless notice of non-renewal is given pursuant to Government Code Sections 51245 et seq. Upon receipt of notice of non-renewal by the other party this Agreement shall remain in effect for the balance of the term remaining since the original execution or the last renewal of this Agreement, as the case may be. A notice of non-renewal irrespective of which party gives the notice shall be recorded by the COUNTY. A copy of the recorded notice of non-renewal shall be forwarded by COUNTY to the California Director of Agriculture. Under no circumstances shall a notice of renewal be required of either party to effectuate the automatic renewal option of this paragraph.

6. No Payments by County - OWNER shall not receive any payment from COUNTY in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of the within Agreement is the substantial public benefit to be derived therefrom and the advantage which will accrue to OWNER as a result of the effect on the method of determining the assessed value of land described herein and any reduction thereon due to the imposition of the limitations on its use contained herein.

.....

.....

7. Successors in Interest - The within Agreement shall run with the land described herein, and shall be binding upon the heirs, successors and assigns of OWNER.

8. Cancellation - Except as provided in Clause 9, below, this Agreement may be cancelled as to any or all of the land described in Exhibit "A" by mutual agreement of COUNTY and OWNER after public hearing has been held in accordance with the provisions of Section 51284 of the Government Code. Neither party hereto can cancel this agreement unilaterally. To be effective a mutual agreement to cancel must be based on one of the following: (a) The cancellation is not inconsistent with the purposes of the California Land Conservation Act of 1965; (b) the cancellation is in the public interest; or (c) the cancellation is in accordance with clause 9, below. The Assessor of the County of San Bernardino shall revalue the land to which the cancellation applies as soon as possible after the cancellation, use the cancellation date as the valuation date, and apply the County's announced ratio to the full cash value to determine the assessed value. The assessed value shall be subject to equalization pursuant to Section 1604 of the Revenue and Taxation Code. When the assessed valuation becomes final, the OWNER shall pay COUNTY, as deferred taxes, an amount equal to 50% (fifty percentum) of the new assessed valuation of the property. If after the effective date of the cancellation, the announced County ratio of assessed value to full cash value is changed, the percentage payment to the County shall be changed so that no greater percentage of full cash value will be paid. If, at the date of the cancellation, the Agreement previously has been subject to a notice of non-renewal, the amount due shall be reduced by the proportion that the whole number of years the Agreement remained in effect measured from the date the notice of non-renewal was given bears to the number of tax lien dates, included in the term covered by Clause 5.

9. Restrictive Law Alteration - This Agreement may be cancelled by mutual agreement of COUNTY and OWNER without payments or public hearing if it is replaced by an enforceable restriction authorized by Article XXVIII of the California Constitution or whenever there is no operative legislation or other law implementing said Article at the time the cancellation is requested by OWNER.

10. Cancellation Recordation - The notice of cancellation shall be recorded with the County Recorder and the California Director of Agriculture and the regularity of procedures as required by this Agreement shall operate as provided in Section 51286 of the Government Code.

11. Division of Land under Agreement - In the event the land under this Agreement is divided, an agreement identical to the agreement then covering the original parcel shall be executed by OWNER on each parcel created by the division at the time of the division. Any agency making an order of division or the County which has jurisdiction shall require, as a condition of the approval of the division, the execution of the agreements provided for in this paragraph.

12. Distribution of Taxes - Upon receipt of deferred taxes payable pursuant to Clause 8, said taxes shall be distributed as provided in Section 51283(c) of the Government Code.

13. Lien or Charge upon Cancellation - Section 51283.3 of the Government Code shall be applicable to the deferred tax payments payable pursuant to Clause 8, except references to the Director of Agriculture shall be construed to refer to the Board of Supervisors of the County.

. . . .
. . . .

. . . .
. . . .

14. Information from Owner - OWNER, upon request of COUNTY, shall provide information relating to OWNER'S obligation under this Agreement.

15. Acts of Non-Renewal by County - Removal of any land under this Agreement from an agricultural preserve either by change of boundaries of the preserve, disestablishment of the preserve or nulling and voiding of the preserve pursuant to Sections 51201.1 and 51243(b) of the Government Code shall be the equivalent of a notice of non-renewal by COUNTY for purposes of Section 422 of the Revenue and Taxation Code.

16. Termination Document Recordation - In the event of termination of this Agreement by (1) notice of non-renewal, (2) cancellation, (3) nullification by annexation or condemnation, the COUNTY shall record the appropriate documents in the County Recorder's Office and file a copy with the Director of Agriculture.

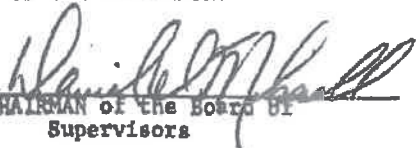
17. Annexation of Land Within One Mile - In the event that any portion of the land of the OWNER, which is included in Exhibit "A" and is within one mile of a city at the time this Agreement is executed, is subsequently annexed by such city, but such city does not affirmatively indicate its intention to succeed to all the rights, duties and powers of this Agreement, then the OWNER and such portion of the land shall be subject to a charge amounting to the differential (for the last five assessments prior to annexation, or the actual number of assessments, if less than five, during the existence of this Agreement) between the taxes as actually computed under this Agreement, and the taxes which would have been computed without the benefit of the restrictions of this Agreement.

18. Notices - Any notices required to be given hereunder or required to be given by law shall be given by United States Registered Mail, return receipt requested, and any notice to the COUNTY shall be sent to the Clerk to the Board of Supervisors of San Bernardino County, San Bernardino, California, and any notice to the OWNER shall be sent to the last known address as shown on the latest assessment roll. Such address shall be the proper address for every person in the case of multiple OWNERS.

19. Severability - It is further understood and agreed by the parties hereto that if any of these provisions shall contravene, or be invalid under any law, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

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

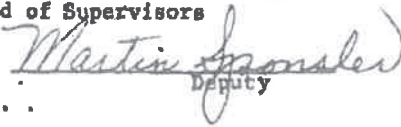
COUNTY OF SAN BERNARDINO

By: 
CHAIRMAN of the Board of Supervisors

ATTEST:

SEAL

V. DENNIS WARDLE, County Clerk
and ex officio Clerk of the
Board of Supervisors

By: 
Deputy

.....

.....

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.

On this 29th day of February, 1968, before me, DOROTHY T. WAGNER, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Daniel D. Mitchell known to me to be the Chairman of the Board of Supervisors of the County of San Bernardino that executed the within Agreement and acknowledged to me that said County of San Bernardino did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



Dorothy T. Wagner
NOTARY PUBLIC in and for said
County and State

DOROTHY T. WAGNER, Notary Public, in and for the County of San Bernardino, State of California. My Commission Expires August 1, 1969.

NOTE: All owners, including multiple owners, and spouses, must execute this Agreement. All signatures must be notarized, either separately or collectively. Please obtain the certification sheets necessary for the signatures and attach them after this page.

OWNER(S):

Joseph Bork
Calvin Bork

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss.

On this 27th day of February, 19 48, before me,
Edith D. Smith, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn, personally
appeared

JOSEPH BORRA and DOLORE BORRA

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.

Edith D. Smith
NOTARY PUBLIC in and for said
County and State
Edith D. Smith



STATE OF CALIFORNIA }
COUNTY OF _____ } ss.

On this _____ day of _____, 19____, before
me, _____, a Notary Public in and for said County
and State, residing therein, duly commissioned and sworn, personally
appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.

NOTARY PUBLIC in and for said
County and State

(SEAL)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

AX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
217-121-01	RANCHO SANTA ANA DEL CHINO - Lot 23, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-121-02	RANCHO SANTA ANA DEL CHINO - Lot 24, Sec. 21, Tp 2 S, R 7 W. 9.5 Ac.
217-121-03	RANCHO SANTA ANA DEL CHINO - Lot 9, Sec. 21, Tp 2 S, R 7 W. EXCEPT street. 9.24 Ac. M/L.
217-121-04	RANCHO SANTA ANA DEL CHINO - Lot 8, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-121-05	RANCHO SANTA ANA DEL CHINO - Lot 7, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-121-06	RANCHO SANTA ANA DEL CHINO - Lot 10, Sec. 21, Tp 2 S, R 7 W. 9.5 Ac.
217-121-07	RANCHO SANTA ANA DEL CHINO - Lot 23, Sec. 21, Tp 2 S, R 7 W. 9.5 Ac.
217-121-08	RANCHO SANTA ANA DEL CHINO - Lot 26, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-122-01	RANCHO SANTA ANA DEL CHINO - Lot 27, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-122-02	RANCHO SANTA ANA DEL CHINO - Lot 22, Sec. 21, Tp 2 S, R 7 W. 9.5 Ac.
217-122-03	RANCHO SANTA ANA DEL CHINO - Lot 11, Sec. 21, Tp 2 S, R 7 W. 9.5 Ac.
217-122-04	RANCHO SANTA ANA DEL CHINO - Lot 6, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-122-05	RANCHO SANTA ANA DEL CHINO - Lot 5, Sec. 21, Tp 2 S, R 7 W. and W 1/2 Walker Avenue closed adj on E. 9 Ac.
217-122-06	RANCHO SANTA ANA DEL CHINO - Lot 12, Sec. 21, Tp 2 S, R 7 W. and W 1/2 Walker Avenue closed adj on E. 9.5 Ac.
217-122-07	RANCHO SANTA ANA DEL CHINO - Lot 21, Sec. 21, Tp 2 S, R 7 W. and W 1/2 Walker Avenue closed adj on E. 9.5 Ac.
217-122-08	RANCHO SANTA ANA DEL CHINO - Lot 28, Sec. 21, Tp 2 S, R 7 W. and W 1/2 Walker Avenue closed adj on E. 9 Ac.
217-122-08	RANCHO SANTA ANA DEL CHINO - Lot 29, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9 Ac.
217-122-10	RANCHO SANTA ANA DEL CHINO - Lot 20, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9.5 Ac.
217-122-11	RANCHO SANTA ANA DEL CHINO - Lot 13, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9.5 Ac.

EXHIBIT "A"

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
217-122-12	RANCHO SANTA ANA DEL OJINO - Lot 4, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9 Ac.

EXHIBIT "B"

AGRICULTURAL AND
COMPATIBLE USES

The following uses are hereby determined to be agricultural and compatible uses within an agricultural preserve, and all other uses of land are prohibited therein:

- (1) Agricultural use, described as any use of land for the purpose of producing an agricultural commodity, consisting of any and all plant and animal products, for commercial purposes, provided such use is permitted by the applicable zoning and not prohibited by other law or ordinance.
- (2) A stand for display and sale of agricultural commodities produced on the premises or on other premises within the preserve.
- (3) Gas, electric, water and communication utility facilities, and public service facilities of like nature operated by a public agency or mutual water company.
- (4) Public highways.
- (5) Fire protection works and facilities.
- (6) Flood control works, including channel rectification and alteration.
- (7) Public works required for fish and wildlife enhancement and preservation.
- (8) Improvements for the primary benefit of the lands within the preserve.
- (9) State improvements described in Section 51293(d) and (e) of the Government Code.
- (10) One-family dwellings for the use only of an owner or manager of land within the agricultural preserve, or a person employed on said land, if such use is permitted by the applicable zoning, but not exceeding three (3) dwellings for each parcel of not less than 10 acres.
- (11) Farm labor camps, including temporary trailer housing, subject to the conditions of law or ordinance otherwise applicable.
- (12) Drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced.
- (13) Any use existing on the date the land is included within an agricultural preserve, but such use once discontinued for two (2) years shall not be resumed unless permitted under these rules.
- (14) Any use required to be permitted by any amendment to the California Land Conservation Act of 1965 hereafter adopted.
- (15) Any use determined to be a compatible use in all agricultural preserves by the Board of Supervisors, after public hearing on ten (10) days' published notice and such other notice, if any, as they may specify. Thereafter such use shall be deemed a compatible use in any agricultural preserve, providing that it is not inconsistent with uses listed in Paragraph (1) above.

EXHIBIT "B"

Page 1.

CERTIFICATION

Under the provisions of the Government Code 27361.7, I, Karen M. Morrison, certify under the penalty of perjury under the State of California that the illegible wording portion of this document to which this statement reads as follows:

LAND CONSERVATION AGREEMENT

RECORDED IN BOOK 6983, PAGE 423

RECORDATION DATE: February 23, 1968

PROPERTY OWNERS NAMES: Joseph Borba and Doleen Borba

Place of Execution: Anterio, CA Date: August 22, 2018

Signature of Declarant: Karen M Morrison

Return to
Clerk to the Board

362 RECORDED AT REQUEST
Board of Supervisors
BOOK 7150 PAGE 345
'68 DEC 19 9:37

BOOK 7150 PAGE 345

NO FEE
B

NOTICE OF RENEWAL OF
LAND CONSERVATION AGREEMENT
(per Gov. Code Section 51244)

OFFICIAL RECORDS
SAN BERNARDINO CO., CALIF.
Ted P. ...
COUNTY RECORDER

WHEREAS, a Land Conservation Agreement was made and entered into on the 23rd day of February, 1968, by and between

JOSEPH BORBA and DOLEEN BORBA and the COUNTY OF SAN BERNARDINO

; and,

WHEREAS, such Land Conservation Agreement was recorded with the County Recorder of San Bernardino County on the 29th day of February, 1968, bears Document No. 663, Book No. 6983, Page No. 423; and,

WHEREAS, neither the County of San Bernardino nor the other contracting party or parties have filed Notices of Non-Renewal in accordance with California Government Code Section 51245,

NOW, THEREFORE, in compliance with the provisions of California Government Code Section 51244, the Clerk of the San Bernardino County Board of Supervisors executes and records this NOTICE OF RENEWAL OF LAND CONSERVATION AGREEMENT, which agreement was previously identified above and is incorporated herein by reference as though set forth in full, and furthermore said Clerk states that the new termination date of said Land Conservation Agreement shall be December 31, 1978, in accordance with the provisions of the Land Conservation Act, particularly Government Code Section 51244, as incorporated in said Land Conservation Agreement.

Dated: Dec. 16, 1968

V. DENNIS WARDLE, County Clerk and
ex-officio Clerk of the Board of
Supervisors of San Bernardino County,
California

By *Rena Montero*
Deputy

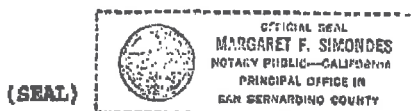
* * * * *

SEAL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.

On this 16th day of December, 1968, before me,
Margaret F. Simondes, A Notary Public in and for said County and
State, residing herein, duly commissioned and sworn, personally appeared
Rena Montero known to me to be the
Deputy Clerk to the Board of Supervisors of San Bernardino County
who executed the within Notice of Renewal of Land Conservation Agreement
and acknowledged to me that she did execute the same for and on behalf of
the County of San Bernardino.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this certificate first above written.



Margaret F. Simondes
Notary Public in and for said
County and State
MARGARET F. SIMONDES
My Commission Expires June 20, 1972

752

RECORDED AT REQUEST Board of Supervisors

BOOK 7616 PAGE 940

1971 FEB 26 AM 12 11

BOOK 7616 PAGE 940 OFFICIAL RECORDS SAN BERNARDINO CO. CALIF.

NO FEE D



AMENDMENT TO LAND CONSERVATION AGREEMENT

THIS AMENDMENT TO THE LAND CONSERVATION AGREEMENT is made and entered into this 3rd day of February, 1971, by and between Joseph Borba and Dolleen Borba

See Exhibit "A" for tax parcels covered by this Amendment. (All owners, including multiple owners, and spouses, must be entered above. If unmarried, so indicate.) hereinafter referred to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER, or OWNER'S predecessors in interest, and COUNTY executed a LAND CONSERVATION AGREEMENT on February 23, 1968, which AGREEMENT was recorded in Book 6983 page 423, in the San Bernardino County Recorder's Office on February 29, 1968, and

WHEREAS, the LAND CONSERVATION AGREEMENT, identified above, is incorporated herein and made a part hereof as though set forth in full in this AMENDMENT, and

WHEREAS, the State Board of Equalization, in conformance with the powers and duties granted to it by the Legislature in California Government Code Section 15606, has determined that Clause 8 in the covenant section of the AGREEMENT, previously identified, is not sufficiently restrictive so that the AGREEMENT is substantially similar to a CONTRACT, as defined and required by the legislation in existence at the time the AGREEMENT was executed, and

WHEREAS, OWNER, or OWNER'S predecessor, and COUNTY intended (as set forth on the first page of the AGREEMENT) "that the terms and conditions and restrictions of this Agreement are substantially similar to contracts authorized by the California Land Conservation Act of 1965 so as to be an enforceable restriction under provisions of California Revenue and Taxation Code Section 422;"

NOW THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and in the AGREEMENT AS AMENDED and the substantial benefits to be derived by OWNER and COUNTY therefrom, do hereby agree as follows:

1. Clause 8 in the covenant section of the AGREEMENT is amended to read as follows:

"8. Cancellation - Except as provided in Clause 9 of this AGREEMENT, this AGREEMENT may be cancelled as to any or all of the land if the following procedures and provisions are complied with:

- a.) Cancellation must be by mutual agreement of the OWNER and the COUNTY and as a result of a request by the OWNER and approval by the Board of Supervisors of the COUNTY.
- b.) There must be a public hearing as to such request for cancellation before the Board of Supervisors.
- c.) A notice of the public hearing must be sent by mail to each owner in the agricultural preserve of land under agreement and there must be publication of notice pursuant to Section 6061 of the Government Code.
- d.) The Board of Supervisors shall make findings that cancellation is not inconsistent with the purposes of the Land Conservation Act of 1965 and is in the public interest. - The existence of an opportunity for another use of the land shall not be sufficient reason for cancellation. A potential alternative use of the land may be considered only if there is no proximate land not subject to a Land Conservation Act contract or agreement suitable for the use to which it is proposed the subject land be put. The uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation. The uneconomic character of the existing use may be considered only if there is no reasonable or comparable agricultural use to which the land may be put.
- e.) If the cancellation is approved and agreed upon, the Assessor of the County of San Bernardino shall revalue the land, without the restriction, to which the cancellation applies as soon as possible after the cancellation, use the cancellation date as the valuation date, and apply the latest assessment ratio that has been published pursuant to Section 251 of Volume 18 of the Administrative Code in order to determine the assessed value. The assessed value shall be subject to equalization pursuant to Section 1604 of the Revenue and Taxation Code. When the assessed valuation becomes final, the OWNER shall pay COUNTY, as deferred taxes, an amount equal to 50% (fifty percentum) of the new assessed valuation of the property. If after the effective date of the cancellation, the announced County ratio of assessed value to full cash value is changed, the percentage payment to the County shall be changed so that no greater percentage of full cash value will have been paid. If, at the date of the cancellation, the Agreement previously has been subject to a notice of nonrenewal, the amount due

shall be reduced by the proportion that the whole number of years the Agreement remained in effect measured from the date the notice of nonrenewal was given bears to the number of tax lien dates, included in the term covered by Clause 5 in the Agreement."

IN WITNESS WHEREOF, OWNER and COUNTY have executed this Amendment to Land Conservation Agreement on the day and year first above written.

COUNTY OF SAN BERNARDINO

BY *Richard J. Ryan*
CHAIRMAN of the
Board of Supervisors

ATTEST:

V. DENNIS WARDLE, County Clerk
and ex officio Clerk of the
Board of Supervisors

BY *Louis Rogers* ^{SEAL}
Deputy

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.

On this 25th day of February, 1971, before me, Margaret F. Simonides, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Ruben S. Ayala known to me to be the Chairman of the Board of Supervisors of the County of San Bernardino that executed the within Contract and acknowledged to me that said County of San Bernardino did execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



(SEAL)

Margaret F. Simonides
NOTARY PUBLIC in and for said
County and State

MARGARET F. SIMONIDES
My Commission Expires June 20, 1972.

NOTE: All owners, including multiple owners, and spouses, must execute this Amendment. All signatures must be notarized, either separately or collectively. Please obtain the certification sheets necessary for the signatures and attach them after this page.

OWNER(S)

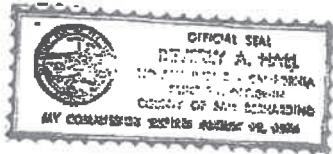
Joseph Borden
Melvin Borden

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss.

On this 19th day of February, 1971, before me
Beverly L. Hall, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn, personally
appeared Joseph Borba and Daleeh Borba

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.



Beverly L. Hall
NOTARY PUBLIC in and for said
County and State

(SEAL)

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

On this _____ day of _____, 19____, before me
_____, a Notary Public in and for said
County and State, residing therein, duly commissioned and sworn, personally
appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to the
within instrument, and acknowledged that he (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this Certificate first above written.

NOTARY PUBLIC in and for said
County and State

(SEAL)

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
217-121-01	RANCHO SANTA ANA DEL CHINO - Lot 25, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-121-02	RANCHO SANTA ANA DEL CHINO - Lot 24, Sec. 21, Tp 2 S, R 7 W. 9.5 Ac.
217-121-03	RANCHO SANTA ANA DEL CHINO - Lot 9, Sec. 21, Tp 2 S, R 7 W. EXCEPT street. 9.24 Ac. M/L.
217-121-04	RANCHO SANTA ANA DEL CHINO - Lot 8, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
217-121-05	RANCHO SANTA ANA DEL CHINO - Lot 7, Sec. 21, Tp 2 S, R 7 W. 9 Ac.
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217-122-09	RANCHO SANTA ANA DEL CHINO - Lot 29, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9 Ac.
217-122-10	RANCHO SANTA ANA DEL CHINO - Lot 20, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9.5 Ac.
217-122-11	RANCHO SANTA ANA DEL CHINO - Lot 13, Sec. 21, Tp 2 S, R 7 W. and E 1/2 Walker Avenue closed adj on W. 9.5 Ac.

663

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL
NUMBER

EXACT DESCRIPTION FROM LAST TAX STATEMENT

217-122-12

RANCHO SANTA ANA DEL CRINO - Lot 4, Sec. 21, Tp 2 S, R 7 W.
and E 1/2 Walker Avenue closed adj on W. 9 Ac.

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18937 LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND LA AVENIDA DRIVE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18937 located at the southeast corner of Archibald Avenue and La Avenida Drive within The Avenue Specific Plan area.

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

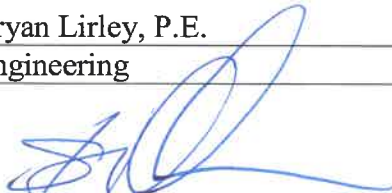
FISCAL IMPACT: None. All public infrastructure improvements required for this subdivision will be constructed by the developer at its sole cost.

BACKGROUND: Final Tract Map No. 18937, consisting of 55 residential lots and 47 lettered lots on 19.78 acres as shown on Exhibit A, has been submitted by the developer, BrookCal Ontario, LLC, a Delaware Limited Liability Company of Costa Mesa California (Mr. Richard Cuoco, Vice President).

Tentative Tract Map No. 18937 was approved by the Planning Commission (6 to 0 with 1 absent) on October 24, 2017 and is consistent with the adopted The Avenue Specific Plan.

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

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

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

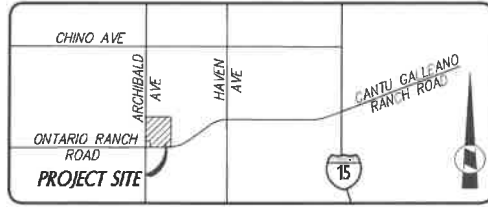
Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

4

The developer has entered into an improvement agreement with the City for Final Tract Map No. 18937 and has posted adequate security to ensure construction of the required public improvements.

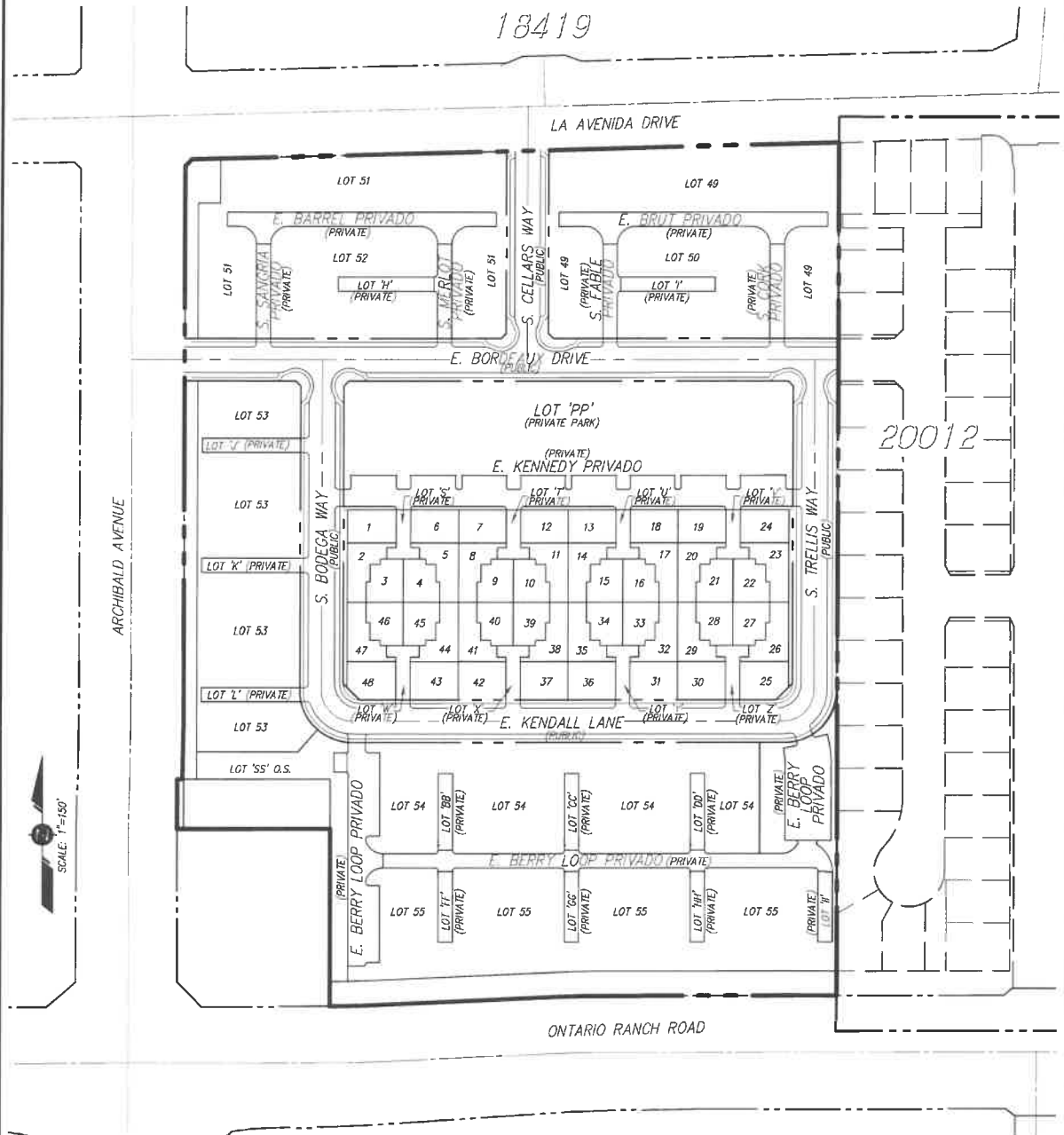
This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT A TRACT MAP NO. 18937



VICINITY MAP
NOT TO SCALE

18419



PREPARED BY:

KA
Engineering, Inc.

ENGINEERING 357 N. SHERIDAN STREET
LAND PLANNING SUITE 117
SURVEYING CORONA, CALIFORNIA 92880
TEL. (951) 279-1800
FAX (951) 279-4380

APPLICANT/OWNER:

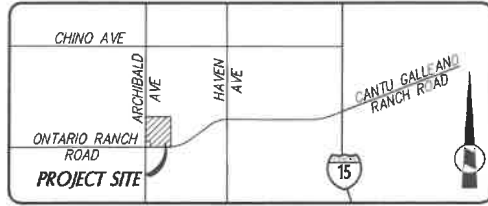
BROOKCAL ONTARIO LLC
3200 PARK CENTER DRIVE, STE 1000
COSTA MESA, CA 92626

CITY OF ONTARIO
ENGINEERING DEPARTMENT

FILE NO. TM-18937

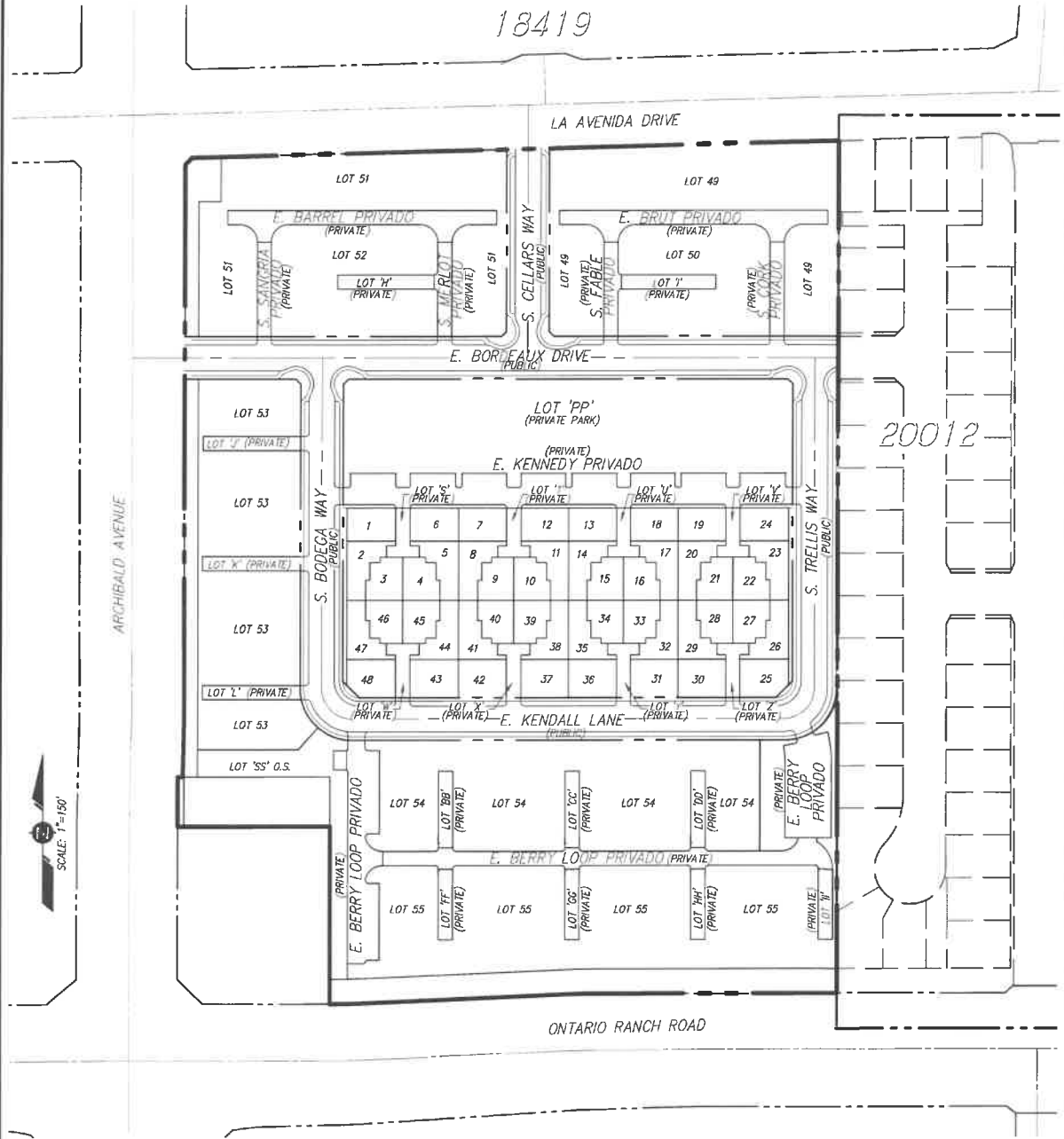
EXHIBIT A
TRACT MAP NO. 18937

EXHIBIT A TRACT MAP NO. 18937



VICINITY MAP
NOT TO SCALE

18419



PREPARED BY:



ENGINEERING
LAND PLANNING
SURVEYING

Engineering, Inc.

357 N. SHERIDAN STREET
SUITE 117
CORONA, CALIFORNIA 92880
TEL. (951) 279-1800
FAX (951) 279-4380

CITY OF ONTARIO
ENGINEERING DEPARTMENT

FILE NO. TM-18937

APPLICANT/OWNER:

BROOKCAL ONTARIO LLC
3200 PARK CENTER DRIVE, STE 1000
COSTA MESA, CA 92626

EXHIBIT A
TRACT MAP NO. 18937

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18937, LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND LA AVENIDA DRIVE.

WHEREAS, Tentative Tract Map No. 18937, submitted for approval by the developer, BrookCal Ontario, LLC, a Delaware Limited Liability Company of Costa Mesa California (Mr. Richard Cuoco, Vice President) was approved by the Planning Commission of the City of Ontario on October 24, 2017; and

WHEREAS, Tentative Tract Map No. 18937 consists of 55 residential lots and 47 lettered lots, being a subdivision of the west 30 acres of the southwest ¼ of the northwest ¼ of Section 14, Township 2 South, Range 7 West, San Bernardino Base and Meridian of the County of San Bernardino, State of California, as described in Grant Deed recorded March 5, 2018, in Instrument No. 2015-0085376 of Official Records; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Tract Map No. 18937, 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, said developer of Final Tract Map No. 18937 will be annexing said tract into Tract No. 18922 which has previously prepared and recorded Covenants, Conditions and Restrictions (CC&Rs), that have been reviewed and approved by the City Attorney's office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners.

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

1. That said Improvement Agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said Improvement Security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Tract Map No. 18937 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 4th day of September 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 September 4, 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 September 4, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: RECOGNITION OF SEPTEMBER 2018 AS ONTARIO PREPAREDNESS MONTH

RECOMMENDATION: That the City Council recognize the month of September 2018 as Ontario Preparedness Month in the City of Ontario and invite the public to attend the City's Ontario Preparedness Month events in September.


COUNCIL GOALS: Maintain the Current High Level of Public Safety
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The Fiscal Year 2018-19 Adopted Budget includes appropriations for the nominal staff and materials cost associated with holding Ontario Preparedness Month events.

BACKGROUND: For the fourteenth consecutive year, the Federal Emergency Management Agency (FEMA) has announced September as National Preparedness Month (NPM). The goal of NPM is to build awareness and encourage Americans to prepare for emergencies in their homes, businesses, schools, and communities. NPM is managed and sponsored by FEMA's Ready Campaign. The Ready Campaign works closely with Citizen Corps and the Ad Council to increase national emergency preparedness awareness across the nation.

During NPM residents are encouraged to plan for an emergency by making a family emergency plan, becoming informed about the different types of emergencies/disasters that could occur in the community, building an emergency supply kit, and getting involved in City of Ontario Community Emergency Response Training. All residents are encouraged to visit the ReadyOntario.com website for additional information regarding emergency plans, hazard mitigation, family emergency kits, and general emergency preparedness guidance.

STAFF MEMBER PRESENTING: Rob Elwell, Fire Chief

Prepared by: Raymond Cheung
Department: Fire
City Manager Approval: 

Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

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Ontario residents and businesses are also invited to attend Ontario Preparedness Month events such as the Earthquake Escape Room and the Disaster Scavenger Hunt, both at the Ovitt Family Community Library located at 215 East C Street. For more information and how to register, visit ReadyOntario.com.

As a result of the City's emergency preparedness efforts, the National Weather Service has recognized the City as StormReady. This recognition showcases the City's commitment to weather readiness and taking appropriate actions by having an Emergency Operations Center, and the vigilant monitoring of weather situations and alerting the public of hazardous weather conditions.

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 42 (WEST HAVEN)

RECOMMENDATION: That the City Council consider and adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 42 (West Haven).

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 in the residential development of the West Haven project is estimated to generate approximately \$8.6 million to be used to help fund a portion of the public infrastructure improvements that will serve the project, and approximately \$318,000 per year, at build out, to fund City services. As proposed, the services maximum annual tax rate on each of the detached units is \$1,622. 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: At a public hearing conducted by the City Council on August 21, 2018, the City Council adopted the resolution of formation for Community Facilities District No. 42 (West Haven) and introduced and waived further reading of an ordinance levying special taxes within the District. Adoption of the ordinance will conclude the formation process for City of Ontario Community Facilities District No. 42 (West Haven).

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 resolutions declaring the City's intention

STAFF MEMBER PRESENTING: Grant D. Yee, Executive Director of Finance

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

Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

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to establish a community facilities district and levy special taxes, and to issue bonds. On July 17, 2018, the City Council approved Resolution No. 2018-100, a Resolution of Intention to establish City of Ontario Community Facilities District No. 42 (West Haven) and authorize the levy of special taxes; and adopted Resolution No. 2018-101, declaring its intention to issue bonds for the district. The Resolution of Intention set a public hearing date for the regularly scheduled City Council meeting of August 21, 2018 to consider formation matters. On August 21, 2018, the City Council adopted the Resolution of Formation and associated resolutions, establishing Community Facilities District No. 42 (West Haven).

The West Haven project addresses the development of approximately 46 gross acres located generally east of Turner Avenue, west of Haven Avenue, south of Riverside Drive, and north of Schaefer Avenue. At build out, the development is projected to include 196 detached residential units. The Community Facilities District is being formed pursuant to the provisions of the STG Communities II, LLC Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

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. 42 (WEST HAVEN).

WHEREAS, on July 17, 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. 42 (West Haven), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 42 (West Haven) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on August 21, 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. 42 (West Haven), 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"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 42 (West Haven)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 42 (West Haven)", 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 incurring indebtedness, levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on August 21, 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 Facilities and 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.

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ 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
September 4, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 43 (PARK PLACE FACILITIES PHASE IV)

RECOMMENDATION: That the City Council consider and adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV).


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 facilities in the residential development of the Park Place Phase IV project is estimated to generate approximately \$13 million, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. 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: At a public hearing conducted by the City Council on August 21, 2018, the City Council adopted the resolution of formation for Community Facilities District No. 43 (Park Place Facilities Phase IV) and introduced and waived further reading of an ordinance levying special taxes within the District. Adoption of the ordinance will conclude the formation process for City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV).

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 resolutions declaring the City's intention

STAFF MEMBER PRESENTING: Grant D. Yee, Executive Director of Finance

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

Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

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to establish a community facilities district and levy special taxes, and to issue bonds. On July 17, 2018, the City Council approved Resolution No. 2018-102, a Resolution of Intention to establish City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV) and authorize the levy of special taxes; and adopted Resolution No. 2018-103, declaring its intention to issue bonds for the district. The Resolution of Intention set a public hearing date for the regularly scheduled City Council meeting of August 21, 2018 to consider formation matters. On August 21, 2018, the City Council adopted the Resolution of Formation and associated resolutions, establishing Community Facilities District No. 43 (Park Place Facilities Phase IV).

The Park Place Phase IV project addresses the development of approximately 40 taxable acres located generally east of Parkplace Avenue, generally west of Haven Avenue, south of Eucalyptus Avenue and north of Parkview Street. At build out, the development is projected to include 335 detached single-family units. The Community Facilities District is being formed pursuant to the provisions of the SL Ontario Development Company, LLC Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

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. 43 (PARK PLACE FACILITIES PHASE IV).

WHEREAS, on July 17, 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. 43 (Park Place Facilities Phase IV), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on August 21, 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. 43 (Park Place Facilities Phase IV), 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"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 43 (Park Place Facilities Phase IV)", 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 incurring indebtedness, levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on August 21, 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 Facilities and 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.

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

PASSED, APPROVED, AND ADOPTED this 4th day of September 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3114 was duly introduced at a regular meeting of the City Council of the City of Ontario held August 21, 2018 and adopted at the regular meeting held September 4, 2018 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3114 duly passed and adopted by the Ontario City Council at their regular meeting held September 4, 2018 and that Summaries of the Ordinance were published on August 28, 2018 and September 11, 2018 in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR


SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA17-003) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19738 (FILE NO. PMTT17-011). THE PROJECT SITE IS BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, CUCAMONGA CREEK CHANNEL TO THE EAST, MERRILL AVENUE TO THE SOUTH, AND CARPENTER AVENUE TO THE WEST, LOCATED WITHIN THE BUSINESS PARK (PA-1) AND GENERAL INDUSTRIAL (PA-2) LAND USE DISTRICTS OF THE WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN (APNS: 0218-221-09, 0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13 and 0218-271-18)

RECOMMENDATION: That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA17-003, on file with the Records Management Department) between the City of Ontario and Ontario Land Ventures, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 19738 (File No. PMTT17-011).

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

FISCAL IMPACT: The proposed Development Agreement will provide funding from a community facilities district for additional City services required to support the West Ontario Commerce Center Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance

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

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

Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

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processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

BACKGROUND: On August 21, 2018, the City Council introduced and waived further reading of an ordinance approving the Development Agreement. On July 3, 2018, the City Council approved the West Ontario Commerce Center Specific Plan (File No. PSP16-002) and certified the Environmental Impact Report (EIR). The Specific Plan establishes the land use designations, development standards, design guidelines and infrastructure improvements for 119.31 acres of land, which includes the potential development of 2,905,510 square feet of industrial development and 55,505 square foot of business park development. The applicant, Ontario Land Ventures, LLC, has submitted a Tentative Parcel Map (File No. PMTT17-011/TPM 19738) to subdivide the 119.31 acre site into 9 parcels for Planning Areas 1 and 2 of the Specific Plan and a Development Plan (File No. PDEV17-057) to construct two industrial buildings totaling 2,217,016 square feet within Planning 2 of the Specific Plan.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Ontario Land Ventures, LLC, has requested that the City enter into negotiations to create a Development Agreement (“Agreement”).

The Agreement proposes to include 119.31 acres of land within Planning Areas 1 and 2 of West Ontario Commerce Center Specific Plan as shown attached **Exhibit “A”**. The Development Agreement will provide for the potential development of up to 555,555 square feet of business park industrial development for Planning Area 1 and up to 2,350,005 square feet of industrial development for Planning Area 2 per the West Ontario Commerce Center Specific Plan. The Agreement grants Ontario Land Ventures, LLC, a vested right to develop Planning Areas 1 and 2 of the Specific Plan, as long as Ontario Land Ventures, LLC, complies with the terms and conditions of the West Ontario Commerce Center Specific Plan and Environmental Impact Report.

The term of the Agreement is for ten years with a five year option. The main points of the Agreement address funding for all new City expenses created by the project which includes; Development Impact Fees for construction of public improvements (i.e. streets and bridges, police, and fire, etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District for reimbursement of public improvements and maintenance of public facilities.

In considering the application at their meeting of July 24, 2018, the Planning Commission found that the Agreement was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments and, with a 7 to 0 vote (Resolution No. PC18-077), recommended approval of the Agreement to the City Council.

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

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The project site is located within the Airport Influence Area of the Ontario International Airport (ONT) and has been found

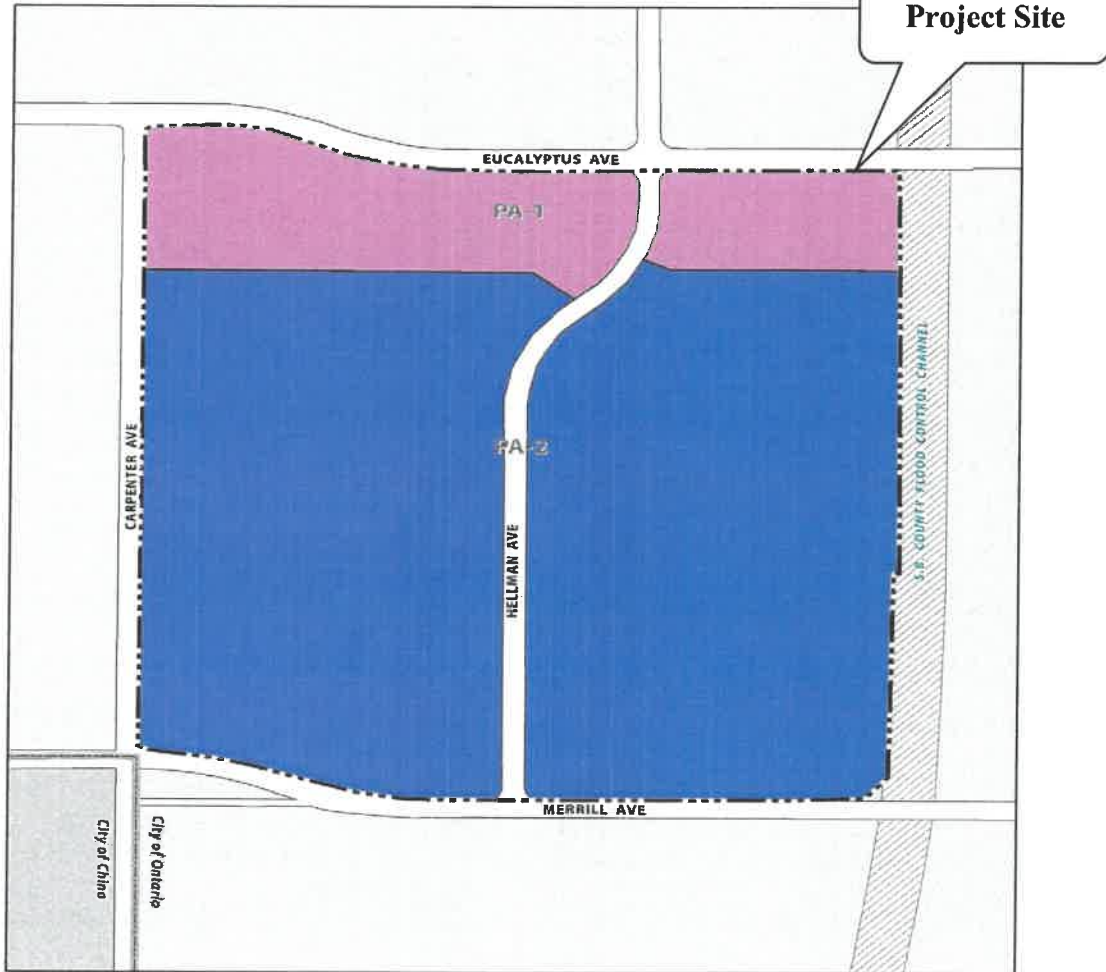
to be consistent with the policies and criteria set forth within the ALUCP for ONT. The project site is also located within the Airport Influence of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were analyzed in the West Ontario Commerce Center Specific Plan (File No. PSP16-002) EIR (SCH#2017041074), that was adopted and certified by the City Council on July 3, 2018. This application is consistent with the EIR and introduces no new significant environmental impacts. All adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"
WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN

Development Plan

FIGURE 3.1: LAND USE PLAN



Legend

- Specific Plan Boundary
- Planning Areas

Land Use Districts

- BP - Business Park
- IG - General Industrial



Date: November 2016
 Source: ESRI World Imagery, 2015
 Base Map Prepared by: MKI, Inc.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA17-003) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19738 (FILE NO. PMTT17-011). THE PROJECT SITE IS BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, CUCAMONGA CREEK CHANNEL TO THE EAST, MERRILL AVENUE TO THE SOUTH, AND CARPENTER AVENUE TO THE WEST, LOCATED WITHIN THE BUSINESS PARK AND INDUSTRIAL LAND USE DISTRICTS OF WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0218-221-09, 0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13 AND 0218-271-18).

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

“The Legislature finds and declares that:

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

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

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

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

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

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public

purposes. The Development Agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement ...”

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

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

WHEREAS, attached to this Ordinance, marked Attachment “A” and incorporated herein by this reference, is the proposed Development Agreement between Ontario Land Ventures, LLC, and the City of Ontario, File No. PDA17-003, concerning 119.31 acres of land generally located on the south side of Eucalyptus Avenue, north side of Merrill Avenue, east side of Carpenter Avenue and west side of the Cucamonga Creek Channel, within the Business Park (Planning Area 1) and General Industrial (Planning Area 2) land use district of the West Ontario Commerce Center Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on April 24, 2018, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. PC18-043 recommending City Council certification of the West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) and Issued Resolution PC18-045 recommending to City Council approval of the West Ontario Commerce Center Specific Plan (File No. PSP16-002); and

WHEREAS, on July 3, 2018, the City Council of the City of Ontario conducted a duly noticed public hearing and adopted Resolution No. 2018-092 for the certification of the West Ontario Commerce Center Specific Plan (SCH#2017041074) and issued Ordinance 3108 approving the Commerce Center Specific Plan (File No. PSP16-002); and

WHEREAS, the environmental impacts of this project were analyzed in the West Ontario Commerce Center Specific Plan (File No. PSP16-002) EIR (SCH#2017041074), that was adopted and certified by the City Council on July 3, 2018. This application is consistent with the EIR and introduces no new significant environmental impacts. All mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on July 24, 2018 the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 7 to 0 to recommend approval (Resolution No. PC18-077) of the Development Agreement to the City Council; and

WHEREAS, on August 21, 2018, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously adopted West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) and supporting documentation. Based upon the facts and information contained in the West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) and supporting documentation, the City Council finds as follows:

a. The previous West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The previous West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The previous West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) reflects the independent judgment of the City Council; and

d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference.

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

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

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

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

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

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

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

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

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

SECTION 4. *Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.* 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, and finds that, at the time of Project implementation, the Project will be consistent with the policies and criteria set forth within the ONT ALUCP and the Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics for Chino Airport.

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

a. The Development Agreement applies to 119.31 acres of land generally located on the south side of Eucalyptus Avenue, north side of Merrill Avenue, east side of Carpenter Avenue and west side of the Cucamonga Creek Channel, within the Business Park (Planning Area 1) and General Industrial (Planning Area 2) land use district of the West Ontario Commerce Center Specific Plan. The project site gently slopes from north to south and is currently developed with agricultural, dairy and single-family residential uses. The majority of the site is currently in agricultural use, including two active dairy farms, row crops, and a hay and alfalfa wholesaler. The remainder of the site is vacant land that was previously used for agriculture; and

b. The property to the north of the Project site is within the Parkside Specific Plan and is designated Medium Density Residential land use district, and is developed with agricultural uses. The property to the east is within the Utility Corridor zoning district, and is developed with the Cucamonga Creek Flood Control Channel. The property to the south is within the Colony Commerce Center West Specific Plan and is designated Industrial land use district, and is developed with agricultural uses. The property to the west is within the Specific Plan/Agricultural (SP/AG) zoning district, and is developed with agricultural and dairy uses; and

c. The Development Agreement establishes parameters for the development Planning Areas 1 and 2 of the West Ontario Commerce Center Specific Plan for industrial development. The Development Agreement also grants Ontario Land Ventures, LLC, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the West Ontario Commerce Center Specific Plan.

d. The Development Agreement focuses 119.31 acres of land generally located on the south side of Eucalyptus Avenue, north side of Merrill Avenue, east side of Carpenter Avenue and west side of the Cucamonga Creek Channel, within the Business Park (Planning Area 1) and General Industrial (Planning Area 2) land use district of the West Ontario Commerce Center Specific Plan; and

e. The Development Agreement will provide for the potential development of up to 555,555 square feet of business park industrial development for Planning Area 1 and up to 2,350,005 square feet of industrial development for Planning Area 2 per the West Ontario Commerce Center Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were analyzed in the EIR (SCH#2017041074) prepared for the West Ontario Commerce Center Specific Plan (File No. PSP16-002) and certified by the City Council on July 3, 2018. All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

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

SECTION 7. Indemnification. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 10. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 11. Publication and Posting. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California, within 15 days following the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 4th day of September 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3115 was duly introduced at a regular meeting of the City Council of the City of Ontario held August 21, 2018 and adopted at the regular meeting held September 4, 2018 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3115 duly passed and adopted by the Ontario City Council at their regular meeting held September 4, 2018 and that Summaries of the Ordinance were published on August 28, 2018 and September 11, 2018, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

**Development Agreement
Between
The City of Ontario and Ontario Land Ventures, LLC
File No. PDA17-003
(*Document follows this page*)**

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

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

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

Ontario Land Ventures, LLC

a Delaware limited liability company

_____, **2018**

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA17-003

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2018 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Ontario Land Ventures, LLC a Delaware limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, *et seq.* of the Government Code and Section 4.01.015 of the Ontario Development Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the CITY-approved development Project ("Project") and this Agreement in that West Ontario Commerce Center Specific Plan Environmental Impact Report (State Clearinghouse No. 2017041074) (the "FEIR") has been adopted. The City Council has found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the Project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the West Ontario Commerce Center Specific Plan; and

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

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

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

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

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

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

WHEREAS, OWNER's Property is within the modified boundaries defined in Exhibit A of the Construction Agreement between the CITY and NMC Builders, LLC ("NMC Builders") and the Property covered by this Agreement is what is known as a "Phase 2 Water Property," and as such, shall be required to provide funding for CITY's future construction of the "Phase 2 Water Improvements," which will result in the availability of additional Net MDD Water Availability required for the development as shown on Exhibit "I-1"; and

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain "Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony," entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all future amendments thereto and including the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August, 2012, and that certain Amendment to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 19th day of September, 2017. Also included by reference is the amendment to the Construction Agreement modifying the boundaries of the property in Exhibit A of such Construction Agreement to include the Property covered by this Agreement and to provide for the additional funds required for CITY's future construction of the "Phase 2 Water Improvements" described in a modification to Exhibit C-3 of the Construction Agreement.

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

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

- (a) Specific Plans and Specific Plan amendments;
- (b) Tentative and final subdivision and parcel maps;
- (c) Development Plan review.

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

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection

with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all Development Approvals approved or issued on or prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of the first reading of the ordinance adopting and approving this Agreement. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations that are in effect and a matter of public record on such date.

1.1.12 "General Plan" means the The Ontario Plan adopted on January 26, 2010.

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 19738 ("Parcel Map") as further described in Exhibit "F" (the "Infrastructure Improvements Exhibits").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

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

1.1.16 "Net MDD" means net maximum daily water demand.

1.1.17 "NMC Builders" means the consortium of investors and developers responsible for the construction of infrastructure within the New Model Colony incorporated as NMC Builders, LLC.

1.1.18 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors-in-interest to all or any part of the Property.

1.1.19 "Owner Affiliate" shall have the meaning set forth in Section 2.4.1(d).

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

1.1.21 "Phase 2 Water Improvements" means the future water infrastructure Improvements required for the issuance by CITY of the "Water Availability Equivalents" ("WAE") for the Project.

1.1.22 "Phase 2 Water Participation Fee" means the fee paid to CITY upon CITY approval of the first of the Development Approvals for the Project, to fund the Property's respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by City. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of

units, and land use category for residential units or the number of square feet, and land use category for non-residential square footage of the Project.

1.1.23 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

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

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

1.1.26 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "West Ontario Commerce Center Specific Plan."

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

1.1.28 "Subsequent Land Use Regulations" means any discretionary Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.29 "Water Availability Equivalent (WAE)" means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the approval of a Tract or Subdivision Map 19738 shall be based upon water demand factors and assumptions listed in the Construction Agreement and shown in Exhibit "I-2".

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — (Not Used)

Exhibit "F" — Infrastructure Improvements Exhibits

Exhibit F-1 – Water Utility Improvements
Exhibit F-2 – Recycled Water Utility Improvements
Exhibit F-3 – Sewer Improvements
Exhibit F-4 – Storm Drain Improvements
Exhibit F-5a – Street and Bridge Improvements
Exhibit F-5b – Street and Bridge Improvements
Exhibit F-5c – Merrill Avenue Bridge Widening Improvements
Exhibit F-5d – Eucalyptus Avenue Bridge Improvements
Exhibit F-6 – Fiber Optic Communications

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

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

Exhibit "I-1" – Ontario Ranch Water Supply Phasing Plan

Exhibit "I-2" – Water Demand Equivalents by Land Use

Exhibit "J" - Form of Disclosure letter

2. GENERAL PROVISIONS.

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

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

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

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

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

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the

Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) Except as expressly provided for herein, no sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald TCE Plume (Exhibit "J"). OWNER may wish to provide the attached Disclosure Letter (Exhibit "J") as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

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

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

(d) Notwithstanding the foregoing, OWNER shall have the right to assign this Agreement to an Owner Affiliate subject to the notice requirements to CITY as described in Paragraph (b) of this Section 2.4.1, above. The term "Owner Affiliate" shall mean, (i) any general or limited partnership in which OWNER is the managing general partner, or (ii) any limited liability company in which OWNER is the managing member.

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

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

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

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

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned.

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

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

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

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

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

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one [1] year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one [1] year) to a member of the public or other ultimate user; and,

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

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject

to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. Within thirty (30) days following such submittal, CITY shall review, and if the above conditions are satisfied, shall approve the partial assignment and release and notify the purchase, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

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

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

- (a) Expiration of the stated term of this Agreement as set forth in Section 2.3.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no

party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within ten (10) business days.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario California, California 91764

With a copy to:

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

If to OWNER:

ONTARIO LAND VENTURES
c/o Real Estate Development Associates, LLC
4100 MacArthur Blvd., Suite 120
Newport Beach, California 92660
Attn: Jason Krotts
Email: jkrotts@redallc.com
Phone: 949-216-7300

With a copy to:

Sheppard Mullin Richter & Hampton LLP
333 S. Hope Street, 43rd Floor
Los Angeles, California 90071
Attn: Alfred Fraijo Jr., Esq.
Email: afraijo@sheppardmullin.com
Phone: 213-617-5567

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority in Section 3.4, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority in Section 3.4, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

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

3.3.1 Infrastructure Improvement Exhibits. Attached hereto as Exhibit "F-1" through Exhibit "F-6" are a description of the Infrastructure Improvements needed for the development of the Property (the "Infrastructure Improvement Exhibits").

3.4 Reservations of Authority.

3.4.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on Owner or the Project;

(f) Regulations that may conflict with this Agreement but to which the OWNER consents.

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

3.4.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent

or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided, however, that nothing contained in this Section 3.4.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

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

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

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property to the connection with the Cucamonga Creek Channel as described in Exhibit "F-4". OWNER shall be responsible for the construction of the necessary extension of storm drain facilities, as described in Exhibit "F-4". OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request, and CITY shall not issue, a final occupancy permit for any building prior to completion of the storm drain Improvements described in Exhibit "F-4". OWNER and CITY agree that OWNER shall perform the following prior to requesting that CITY issue a temporary occupancy permit for any structures on the Property:

- a. Complete the design plans for the storm drain Improvements in Merrill Avenue as described in Exhibit "F-4";

- b. Complete the construction of the storm drain Improvements in Merrill Avenue and an interim connection of the new storm drain Improvements in Merrill Avenue to the existing storm drainage connection to the Cucamonga Creek Channel;
- c. Submit completed applications to the County of San Bernardino and the Army Corps of Engineers (“ACOE”) for all permits required for the connection of the storm drain Improvements to Cucamonga Creek Channel;
- d. Make all commercially reasonable efforts to receive approval from the ACOE for construction plans for the connection of the Merrill Avenue storm drain Improvements to the Cucamonga Creek Channel;
- e. Provide to CITY written evidence, on a bi-monthly basis, of such reasonable efforts demonstrating progress towards the issuance of the required permits from the ACOE. A summary of communications (email and telephone) requesting status updates on ACOE permit and plan check shall be deemed to demonstrate progress as described above.

Upon satisfaction of the above conditions by OWNER, CITY shall consider OWNER's request for the issuance of a temporary occupancy permit. CITY agrees that such temporary occupancy permit may remain valid until such time that OWNER completes the construction of the final connection of the storm drain Improvements Merrill Avenue to the Cucamonga Creek Channel.

OWNER agrees that, upon issuance of the required permits for the construction of the connection of the storm drain Improvements in Merrill Avenue by the County of San Bernardino and the ACOE, OWNER shall construct and complete the final connection of the storm drain Improvements in Merrill Avenue to the Cucamonga Creek Channel. OWNER agrees that OWNER shall complete the construction of the final connection of the storm drain Improvements to the Cucamonga Creek Channel prior to the expiration of any temporary certificate of occupancy issued by CITY for any structure on the Property.

OWNER and City agree that OWNER may apply for and CITY may grant extensions to the duration of any temporary certificate of occupancy in accordance with CITY regulations and procedures.

OWNER and CITY agree that a portion of the storm drain Improvements described in Exhibit “F-4” may be constructed by others or may be constructed pursuant to a cooperative agreement with others. If such storm water Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those storm drain Improvements constructed and completed by others and accepted by CITY.

3.5.2 OWNER agrees that development of the Project shall require the construction of street Improvements as described in Exhibit “F-5a” and Exhibit “F-5b”.

OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings on the Property prior to Substantial Completion of the street Improvements as described in Exhibit "F-5a", including the construction of street Improvements on Eucalyptus Avenue from Carpenter Avenue to the transition area to the future bridge at the Cucamonga Creek Channel. . For purposes of the foregoing, street Improvements shall be deemed "Substantially Complete" even if the final lift of pavement has not been completed (i.e., OWNER may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to Substantial Completion of the street Improvements. OWNER agrees that the street Improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street Improvements. OWNER and CITY agree that a portion of the street Improvements described in Exhibit "F-5a" and Exhibit "F-5b" may be constructed by others, or pursuant to a cooperative agreement with others. If such street Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those street Improvements constructed and completed by others and accepted by CITY.

3.5.3 OWNER agrees that development of the Project shall require the construction of a portion of the Merrill Avenue Bridge over the Cucamonga Creek Channel as described in Exhibit "F-5c". OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the bridge expansion Improvements described in Exhibit "F-5c". OWNER and CITY agree that OWNER shall have completed the following, prior to requesting that CITY issue a temporary occupancy permit for any structure on the Property:

- a. Complete the design plans for the Merrill Avenue Bridge Improvements as described in Exhibit "F-5c";
- b. Submit completed applications to the County of San Bernardino and the ACOE for all permits required for the construction of the Merrill Avenue Bridge Improvements in Cucamonga Creek Channel;
- c. Make all commercially reasonable efforts to receive approval from the ACOE for construction plans for the Merrill Avenue Bridge Improvements;
- d. Provide to CITY written evidence, on a bi-monthly basis, of such reasonable efforts demonstrating progress towards the issuance of the required permits from the ACOE. A summary of communications (email and telephone) requesting status

updates on ACOE permit and plan check shall be deemed to demonstrate progress as described above.

Upon satisfaction of the above conditions by OWNER, then CITY shall consider OWNER's request for a temporary occupancy permit. CITY agrees that such temporary occupancy permit may remain valid until such time that OWNER completes the construction of the Merrill Avenue Bridge Improvements over the Cucamonga Creek Channel.

OWNER agrees that, upon issuance of the required permits for the construction of the Merrill Avenue Bridge Improvements by the County of San Bernardino and the ACOE, OWNER shall construct and complete the Merrill Avenue Bridge Improvements. OWNER agrees that OWNER shall complete the construction of the Merrill Avenue Bridge Improvements prior to the expiration of any temporary certificate of occupancy issued by CITY for any structure on the Property.

OWNER and City agree that OWNER may apply for and CITY may grant extensions to the duration of any temporary certificate of occupancy in accordance with CITY regulations and procedures.

OWNER and CITY agree that the Merrill Avenue Bridge Improvements described in Exhibit "F-5c" may be constructed by others, or pursuant to a cooperative agreement with others. If such Merrill Avenue Bridge Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those Merrill Avenue Bridge Improvements constructed and completed by others and accepted by CITY.

3.5.4 OWNER agrees that development of the Project shall require the construction of a portion of the Eucalyptus Avenue Bridge Improvements over the Cucamonga Creek Channel as described in Exhibit "F-5d". The portion shall be equal to the south half of the bridge plus the median, one travel lane on the north half and a five-foot shoulder – roughly 2/3 of the bridge. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of – Building 1 for the Property according to plans approved by CITY prior to completion of the Eucalyptus Avenue Bridge Improvements over the Cucamonga Creek Channel. In the event OWNER is prepared to commence construction on any remaining structure(s) on the Property prior to completion of the Eucalyptus Avenue Bridge Improvements, OWNER and CITY agree that CITY may issue grading, and/or building permits and other required permits for OWNER to initiate construction of the remaining structure(s) on the Property according to plans approved by CITY prior to completion of the Eucalyptus Avenue Bridge Improvements over the Cucamonga Creek Channel provided that OWNER establishes and funds an escrow account in an amount required to complete the construction of Eucalyptus Avenue Bridge Improvements, as noted above. Such funding amount for the remaining Eucalyptus Avenue Bridge Improvements shall be be 2/3 the cost of the bridge as identified in the most recent Development Impact Fee study or based

on a cost estimate, approved by the City, utilizing the bridge plans approved by the County of San Bernardino, ACOE, and the City, and shall include a reasonable contingency amount.. The Escrow instructions shall be in a form approved by the City Attorney. OWNER and CITY agree that OWNER may utilize and expend the funds from the escrow account to complete construction on the Eucalyptus Avenue Bridge Improvements.

3.5.5 OWNER and CITY agree that OWNER shall have completed the following, prior to requesting that CITY issue a temporary occupancy permit for any structures on the Property:

- a. Complete the design plans for the Eucalyptus Avenue Bridge Improvements as described in Exhibit "F-5d";
- b. Submit completed applications to the County of San Bernardino and the ACOE for all permits required for the construction of the Eucalyptus Avenue Bridge Improvements over the Cucamonga Creek Channel.

Upon satisfaction of the above conditions by OWNER, then CITY shall consider OWNER's request for a temporary occupancy permit. CITY agrees that such temporary occupancy permit may remain valid until such time that OWNER completes the construction of the Eucalyptus Avenue Bridge Improvements over the Cucamonga Creek Channel. OWNER agrees that, upon issuance of the required permits for the construction of the Eucalyptus Avenue Bridge Improvements by the County of San Bernardino and the ACOE, OWNER shall construct and complete the Eucalyptus Avenue Bridge Improvements. OWNER agrees that OWNER shall complete the construction of the Eucalyptus Avenue Bridge Improvements prior to the expiration of any temporary certificate of occupancy issued by CITY for any structure on the Property.

OWNER and City agree that OWNER may apply for and CITY may grant extensions to the duration of any temporary certificate of occupancy in accordance with CITY regulations and procedures.

OWNER and CITY agree that the Eucalyptus Avenue Bridge Improvements described in Exhibit "F-5d" may be constructed by others, or pursuant to a cooperative agreement with others. If such Eucalyptus Avenue Bridge Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those Eucalyptus Avenue Bridge Improvements constructed and completed by others and accepted by CITY.

3.5.6 OWNER agrees that development of the Property shall require the extension of permanent master planned potable water utility Improvements as described in Exhibit "F-1" and recycled water utility Improvements as described in Exhibit "F-2", consisting generally of the construction of the extension of permanent master planned potable and recycled water utility Improvements from two (2) points of connection to serve the Property. OWNER agrees that such recycled water utility Improvements may include

the relocation of the existing recycled water line owned and operated by the Inland Empire Utilities Agency ("I.E.U.A.") generally located in Carpenter Avenue (or another alternative acceptable to CITY) and extension of the recycled water line in Merrill Avenue to a connection point with the existing recycled water line in Archibald Avenue. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER. OWNER agrees that OWNER shall not request and CITY shall not issue a Temporary occupancy permit for any buildings on the Property until the completion of the water and recycled water improvements described in Exhibit "F-1" and Exhibit "F-2". City agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the water and recycled water improvements if there is available permanent water and recycled water service from a minimum of one (1) point of connection and sufficient water is available for fire protection purposes for any buildings while under construction. OWNER and CITY agree that a portion of the water and recycled water Improvements described in Exhibit "F-1" and Exhibit "F-2" may be constructed by others, or pursuant to a cooperative agreement with others. If such water and/or recycled Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those water and/or recycled water Improvements constructed and completed by others and accepted by CITY.

3.5.7 OWNER agrees that development of the Property shall require the construction of permanent master planned sewer Improvements as described in Exhibit "F-3". OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue a final occupancy permit for any buildings prior to completion of the sewer improvements described in Exhibit "F-3." CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the sewer improvements described in Exhibit "F-3". OWNER and CITY agree that a portion of the sewer Improvements described in Exhibit "F-3" may be constructed by others, or pursuant to a cooperative agreement with others. If such sewer Improvements are constructed by others, or in cooperation with others, and are completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those sewer Improvements constructed and completed by others and accepted by CITY.

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

Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This Section 3.6 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.6.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.6.1 and 3.6.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.6.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.6.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

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

condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

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

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

4. PUBLIC BENEFITS.

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

4.2 Development Impact Fees.

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

4.2.2 Time of Payment. The DIF required pursuant to Subsection 4.2.1, shall be paid to CITY prior to the issuance of building permit for each applicable building (subject to the application/use of available fee credits), except for the Open Space and Habitat Acquisition Development Impact Fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the Ontario Ranch area shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F-1" through Exhibit "F-5d" and any and all tentative parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.5 and 3.6, all other required Improvements for each parcel map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for the Parcel Map.

4.3.2 Construction of Public Infrastructure by Third Parties. CITY and OWNER acknowledge that a portion of the Improvements described in Exhibit "F-1" through Exhibit "F-5c" are necessary for the development of surrounding properties within the Ontario Ranch and the other property owners are also obligated to construct the Improvements or portions thereof. As such, CITY agrees that OWNER's obligation to construct the Improvements may be satisfied by third party owners pursuant to separate written agreements between OWNER and said third party undertaking the construction of the Improvements. Nothing in this Agreement shall be construed to prohibit the coordination of the construction of the Improvements between private parties, including the allocation of costs for the construction of the Improvements. Notwithstanding anything to the contrary herein, any applicable DIF Credits may be transferred and assigned from one (1) party to another with respect to the construction of the Improvements and such transfer or assignment shall not require the conveyance of any real property.

4.3.3 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property. OWNER and CITY agree that OWNER may, in-lieu of utilizing recycled water during grading and construction, utilize water from existing agricultural wells on the Property subject to the terms of a separate Well Use Agreement between the CITY and OWNER.

4.3.4 Construction of DIF Program Infrastructure To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's DIF Program CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a

separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Public Services Funding Fee.

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

4.4.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in a single installment payment in the amount of Fifty-Nine Cents (\$0.59) per square foot of each non-residential building. The single installment for non-residential uses shall be due and payable on a building-by-building basis prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2019. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.5 Net MDD/Water Availability Equivalents.

4.5.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders to reserve exclusively for members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders and/or OWNER. OWNER acknowledges that the provisions of the Construction Agreement, as amended, requires that the City shall not issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders, except to the bearer of a Certificate of Net MDD Water Availability.

4.5.2 Requirement for NMC Builders Membership as a Phase 2 Water Member. OWNER and CITY agree that OWNER's payment to CITY required by Section 4.5.3 below represents OWNER's contribution to the funding required for the future construction of the Phase 2 Water Improvements and the availability of additional Net MDD Water Availability required for the development of the Property described in Exhibit A of this Agreement. CITY and OWNER also agree that CITY approval of this Agreement shall be conditioned upon OWNER agreement to become a Member of NMC Builders. OWNER shall complete the process required to become a member of NMC Builders within one-hundred twenty (120) of the Effective Date of this Agreement.

4.5.3 CITY issuance of Water Availability Equivalents. Within thirty (30) days after the effectiveness of this Development Agreement OWNER shall pay to CITY the applicable Phase 2 Water Participation Fee. The Phase 2 Water Participation Fee shall be calculated based on the amount of the Regional Water DIF for the applicable land use category, the maximum square footage of the structures within Planning Areas 1 and 2 of the Specific Plan of 555,505 square feet of Business Park uses and 2,350,005 square feet of Industrial uses. The calculated amount of the Phase 2 Water Participation Fee shall be paid to City within thirty (30) days after the effectiveness of this Agreement or, at OWNER's option, the Phase 2 Water Participation Fee may be paid to CITY in two (2) installments. The first installment shall be fifty percent (50%) of the total Phase 2 Water Participation Fee and such first installment shall be due and payable to City within thirty (30) days after the Effective Date of this Agreement. The second installment shall be the remaining amount of the Phase 2 Water Participation Fee and such second installment shall be due and payable to City within one (1) year after the payment of the first installment, or prior to, and as a condition precedent to the recording of any final parcel map for the Project, whichever occurs first. Upon OWNER's complete payment to CITY of the Phase 2 Water Participation Fee, CITY shall issue a Certificate of Water Availability Equivalents in the form attached hereto as Exhibit "G". Such Water Availability Equivalents Certificate shall be issued by CITY within thirty (30) days of the receipt of such required payment. CITY and OWNER agree that the amount of Water Availability Equivalents issued to OWNER shall be based on the maximum projected need for Water Availability Equivalents required for the Property based upon water demand factors and assumptions listed in Exhibit C-2R of the Phase 2 Water Amendment, "Water Demand Equivalents by Land Use" for each land use category. Additionally, within thirty (30) days of CITY's receipt of OWNER complete payment as required under this Section, CITY shall issue a certificate of DIF Credit against OWNER's remaining DIF obligations in the regional water DIF Category. The amount of the DIF Credit issued by CITY shall be equivalent to OWNER's payment to CITY of the Phase 2 Water Participation Fee after any and all reductions in the Fee provided to OWNER under Sections 4.5.3.1 and 4.5.3.2 below. The form of the Certificate of DIF Credit shall be as described in Exhibit "H", attached hereto and incorporated herein.

4.5.3.1 CITY agrees that OWNER shall be entitled to a reduction in the calculated Phase 2 Water Participation Fee in recognition of OWNER's design and construction of a portion of the Phase 2 Water Improvements. Such reduction may be taken, at OWNER's option, from OWNER's first installment of the OWNER's Phase 2 Water Participation Fee and/or from OWNER's second installment of the Phase 2 Water Participation Fee. OWNER's reduction in the Phase 2 Water Participation Fee shall be based upon the estimated amount in the CITY's DIF Program for the design and construction of the Phase 2 Water Improvements to be constructed by OWNER in Eucalyptus Avenue from Carpenter Avenue to a connection with existing water facilities in Archibald Avenue as shown on Exhibit "F-1".

4.5.3.2 CITY and OWNER agree that OWNER's Phase 2 Water Participation Fee shall initially be reduced by the DIF Program estimate for the design and construction of the Phase 2 Water facilities to be constructed by OWNER. Upon completion of the construction of Phase 2 Water facilities, if OWNER's actual eligible costs for the Phase 2

Water Improvements are less than the DIF Program Estimate, OWNER shall pay to CITY the amount such actual eligible costs are less than the DIF Program Estimate. Such payment to CITY, if any, shall be due to CITY within thirty (30) days of the determination that such actual eligible costs are less than the DIF Program Estimate. If OWNER's actual eligible costs for the Phase 2 Water Improvements are more than the DIF Program Estimate, CITY shall issue DIF Credits in the amount such actual eligible costs are more than the DIF Program Estimate. Such issuance to OWNER, if any, shall be issued to OWNER within thirty (30) days of the determination that such actual eligible costs are more than the DIF Program Estimate.

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

4.7 Compliance with Public Benefits Requirements.

4.7.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.6, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the CITY to any and all remedies available to it, including, without limitation, the right of the CITY to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability. Nothing herein shall constitute a waiver of OWNER right to assert a default (or failure to perform) by the CITY has excused OWNER's performance under this Agreement.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Development Plan, the Property subject to such Development Plan shall be included in a community facilities district ("CFD") to finance CITY services through annual special taxes that will initially be Thirty Cents (\$0.30) per square foot for non-residential buildings for the CITY's fiscal year 2018-19. These amounts shall be subject to an automatic increase at a rate not to exceed four percent (4%) per year. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided, however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. . It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the CITY's ability to take any and all necessary steps requisite to the formation of the CFD to finance CITY services through annual special taxes as set forth

in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

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

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

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

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

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and
- (c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

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

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that: (1) this Agreement remains in effect; and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other

transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [OMITTED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, and OWNER covenants not to sue for damages or claim any damages:

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

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

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

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of

any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

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

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

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such general plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan and this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly

notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

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

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

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

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

10. MORTGAGEE PROTECTION.

10.1 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering

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

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

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

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

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

(e) In the event of a default by OWNER, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of: (i) the date of Mortgagee's receipt of the notice referred to in Section 10.1(b) above; or (ii) the expiration of the period provided herein for OWNER to remedy or cure such default, and CITY shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by OWNER; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently

prosecutes the cure to completion, and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors-in-interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

11.7 Joint and Several Obligations. Subject to Section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one (1) owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

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

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

11.13 Successors-in-Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors-in-interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venture resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

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

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

"OWNER"

ONTARIO LAND VENTURES, LLC
a Delaware limited liability company

By: _____
Name: _____
Its: _____
Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Scott Ochoa City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

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

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

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

APN: 0218-261-16

ASSESSOR'S MAP 0218, PAGE 26

GOVERNMENT LOT 2 AND THE SOUTHERNLY 12 FEET OF SECTION 22,
TOWNSHIP 2 SOUTH, RANGE 7 WEST, EXEMPTING THE COUNTY ROAD.

42.25 ACRES MORE OR LESS

APN: 0218-261-22

ASSESSOR'S MAP 0218, PAGE 26

EASTERLY 509.04 FEET, WESTERLY 1044.02 FEET OF GOVERNMENT LOT
1 OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, EXEMPTING
SOUTH 12 FEET.

15.28 ACRES MORE OR LESS

APN: 0218-261-23

ASSESSOR'S MAP 0218, PAGE 26

WESTERLY 534.98 FEET OF GOVERNMENT LOT 1 OF SECTION 22 ,
TOWNSHIP 2 SOUTH, RANGE 7 WEST, EXEMPTING SOUTH 12 FEET.

16.06 ACRES MORE OR LESS

APN: 0218-261-32

ASSESSOR'S MAP 0128, PAGE 26

GOVERNMENT LOT 1 OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7
WEST, EXEMPTING SOUTH 12 FEET AND EXEMPTING WEST 1044.02 FEET

12.54 ACRES MORE OR LESS

APN: 0218-271-04

ASSESSOR'S MAP, BOOK 0218, PAGE 27

WELL NEAR THE NORTHERLY LINE, SOUTHERN 1312 FEET, EAST 2334.05 FEET OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST,

APN: 0218-271-08

ASSESSOR'S MAP, BOOK 0218, PAGE 27

WEST 243.64 FEET OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, EXEMPTING SOUTH 1326.15 FEET AND EXEMPTING WELLSITE.

7.40 ACRES MORE OR LESS

APN: 0218-271-10

ASSESSOR'S MAP, BOOK 0218, PAGE 27

WELL LOCATED NEAR THE NORTH LINE OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, ABOUT 2430 FEET WEST OF NORTHEAST CORRECTION OF SAID SECTION AND ABOUT 210 FEET EAST OF EAST LINE OF GOVERNMENT LOT 1 OF SAID SECTION.

APN: 0218-271-13

ASSESSOR'S MAP, BOOK 0218, PAGE 27

A PORTION OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, EXEMPTING A PORTION LYING WITHIN STRIP OF LAND 195 FEET WIDE BEGINNING 95 FEET EASTERLY FROM AND 100 FEET WESTERLY FROM THE FOLLOWING DESCRIBED LINE: BEGINNING AT POINT IN MERRILL AVENUE THAT IS 1844.82 FEET FROM SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 22; THENCE

NORTHERLY 697.68 FEET ALONG NON-TANGENT CURVE, CONCAVE WESTERLY HAVING RADIUS OF 12,000 FEET AND CENTRAL ANGLE OF 03° 19'52" BEGINNING AT TANGENT THEREOF BEARING NORTH 04° 18'26" EAST; THENCE NORTH 00° 58'34" EAST TO NORTH LINE OF SAID SECTION 22, EXEMPTING EAST 1830 FEET AND EXEMPTING SOUTH 1326.15 FEET OF SAID NORTHEAST QUARTER OF SECTION 22.

APN: 0218-271-18

ASSESSOR'S MAP, BOOK 0218, PAGE 27

PORTION OF THE SOUTHERLY 1326.15 FEET OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF SECTION 22, ALSO BEING A POINT ON THE CENTERLINE OF MERRILL AVENUE, 50.00 FEET WIDE THENCE ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER NORTH 00° 11'00" EAST, 1326.15 FEET TO THE NORTHERLY LINE OF SAID SOUTHERLY 1326.15 FEET OF THE NORTHEAST QUARTER OF SECTION 22; THENCE ALONG SAID NORTHERLY LINE SOUTH 89° 43'20" EAST, 715.04 FEET TO THE EASTERLY LINE OF SAID PARCEL; THENCE ALONG SAID EASTERLY LINE SOUTH 00° 09'56" WEST, 356.68 FEET; THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 89° 50'04" WEST, 15.00 FEET; THENCE CONTINUING ALONG SAID EASTERLY LINE SOUTH 00° 09'56" WEST, 272.35 FEET TO AN 11,885.00 FOOT RADIUS, TANGENT CURVE, CONCAVE WESTERLY; THENCE CONTINUING ALONG SAID EASTERLY LINE, SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02° 36'26" AN ARC DISTANCE OF 540.82 FEET, TO A POINT FROM WHICH A RADIAL LINE BEARS NORTH 87° 13'38" WEST; THENCE CONTINUING ALONG SAID EASTERLY LINE, NON-TANGENT TO SAID CURVE SOUTH 34° 51'14" WEST, 189.98 FEET TO THE CENTERLINE OF SAID MERRILL AVENUE; THENCE ALONG SAID CENTERLINE NORTH 89° 43'20" WEST, 580.03 FEET TO THE POINT OF BEGINNING. EXCEPTING THEREFROM A WELL SITE MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTH 1312.00 FEET OF SAID NORTHEAST QUARTER OF SECTION 22; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTH 1312.00 FEET NORTH 89° 43'20" WEST, 1964.05 FEET TO THE TRUE POINT OF BEGINNING THENCE SOUTH 00° 11'00" WEST, 30.00 FEET; THENCE NORTH 89° 43'20" WEST, 30.00 FEET; THENCE NORTH 00° 11'00" EAST, 30.00 FEET; THENCE SOUTH 89° 43'20" EAST, 30.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 0218-221-09

ASSESSOR'S MAP, BOOK 0218, PAGE 27

GOVERNMENT LOT 4 OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 7
WEST.

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Map showing Property and its location

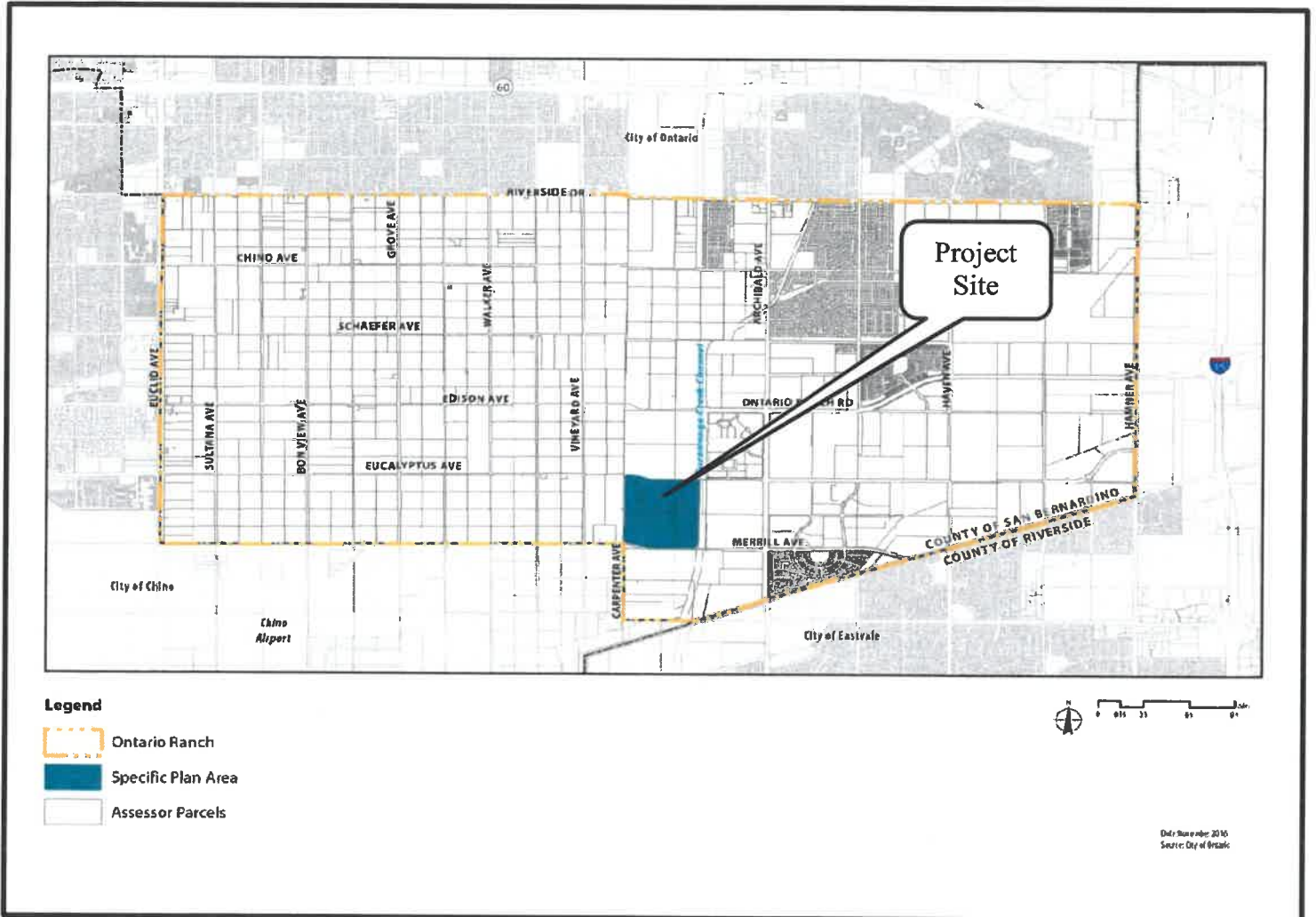


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

On April 24, 2018, the Planning Commission:

- a) Issued Resolution No. issued Resolution PC18-043 recommending City Council certification of the West Ontario Commerce Center Specific Plan EIR (SCH#2017041074).
- b) Issued Resolution PC18-045 recommending City Council approval of the West Ontario Commerce Center Specific Plan (File No. PSP16-002).

On July 3, 2018, the City Council:

- a) Issued Resolution 2018-092 to certifying West Ontario Commerce Center Specific Plan Environmental Impact Report (SCH#2017041074).
- b) Adopted Ordinance No. 3108 approving the West Ontario Commerce Center Specific Plan (PSP16-002).

On July 24, 2018, the Planning Commission:

- a) Issued Resolution No. 2018-075 for the approval of Tentative Tract Map 19738 (File No. PMTT17-011).
- b) Issued Resolution No. 2018-076 for the approval of Development Plan (File No. PDEV17-003).

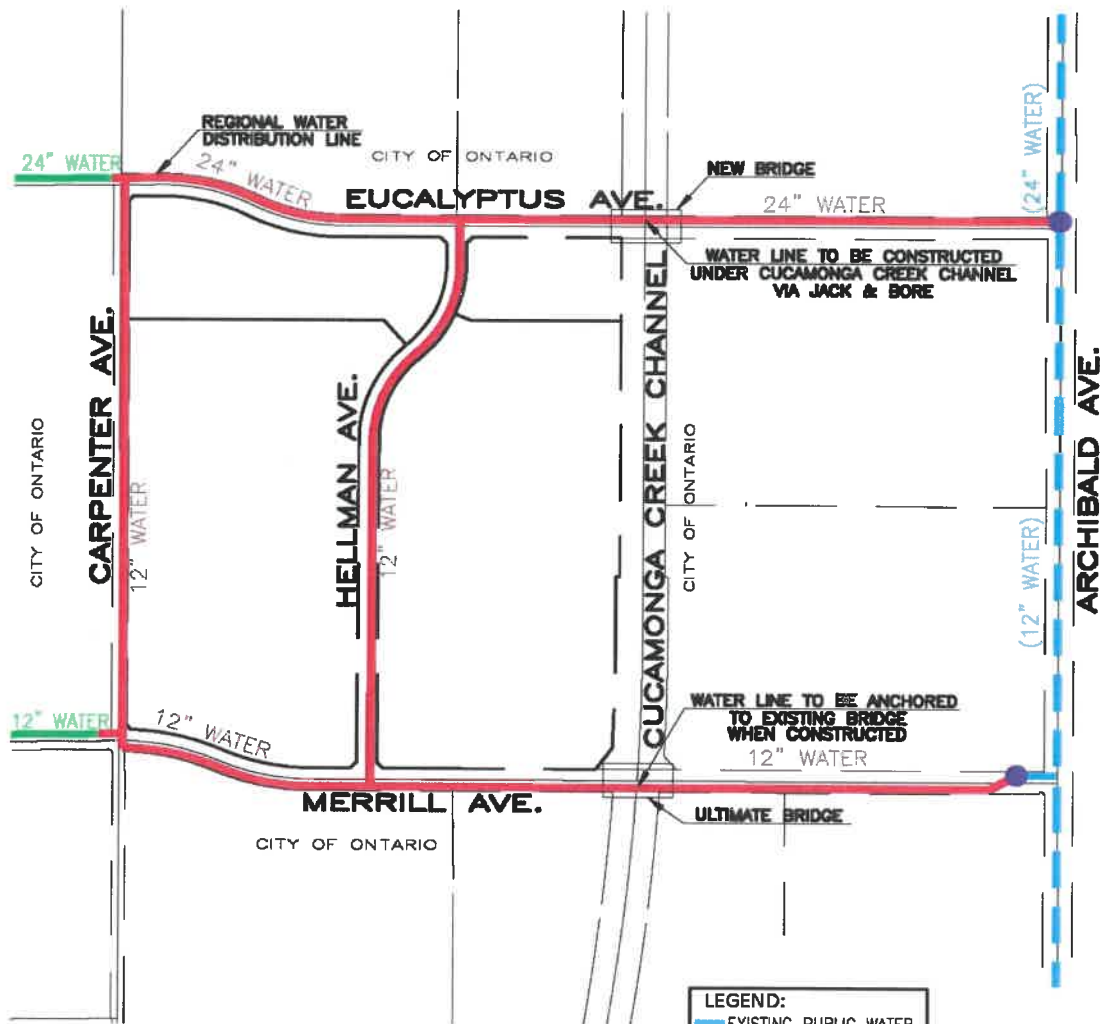
EXHIBIT "D"
TO DEVELOPMENT AGREEMENT
Existing Land Use Regulations

These documents are listed for reference only:

1. The West Ontario Commerce Center Specific Plan (File No. PSP16-002) Environmental Impact Report (SCH#2017041074), Resolution No. 2018-092.
2. The West Ontario Commerce Center Specific Plan (File No. PSP16-002, Ordinance No. 3108.
3. City of Ontario Municipal Code
 - a. Six – Sanitation & Health
 - b. Seven – Public Works
 - c. Eight – Building Regulations
 - d. Nine – Development Code
 - e. Ten – Parks & Recreation

EXHIBIT "F-1" REQUIRED UTILITY IMPROVEMENTS

EXHIBIT F-1
WATER UTILITY IMPROVEMENTS

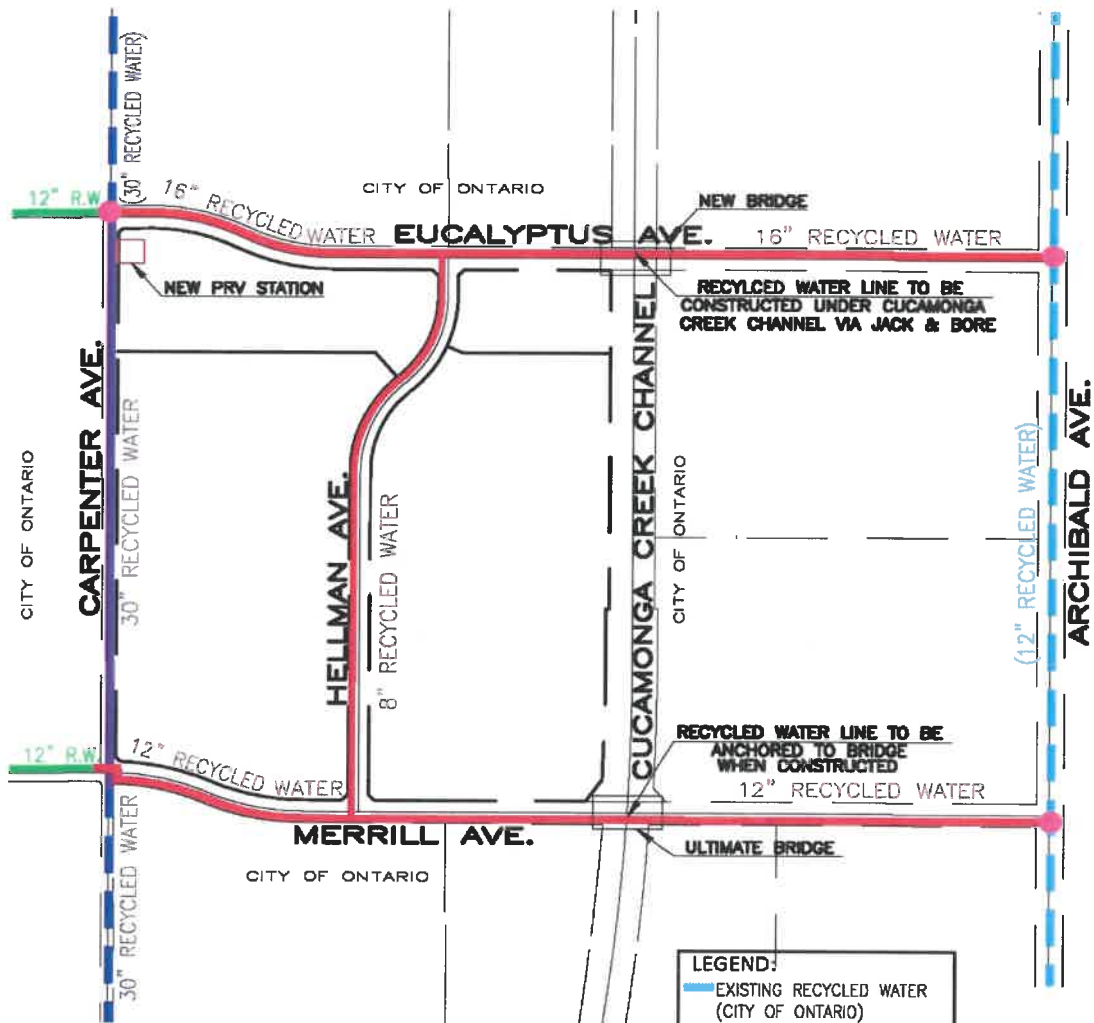


WestLAND Group, Inc.
 4150 CONCOURS, ONTARIO, CA 91764
 PHONE: (909) 989-5789 FAX: (909) 989-0660
 Land Surveyors • Civil Engineers • GIS



EXHIBIT "F-2" RECYCLED WATER UTILITY IMPROVEMENTS

EXHIBIT F-2 RECYCLED WATER UTILITY IMPROVEMENTS



LEGEND:

- EXISTING RECYCLED WATER (CITY OF ONTARIO)
- EXISTING RECYCLED WATER (IEUA)
- NEW RECYCLED WATER (CITY OF ONTARIO)
- FUTURE RECYCLED WATER (CITY OF ONTARIO)
- RELOCATED RECYCLED WATER (IEUA)
- POINT OF CONNECTION

WestLAND Group, Inc.
 4150 CONCOURS, ONTARIO, CA 91764
 PHONE: (909) 989-3789 FAX: (909) 989-9660
 Land Surveyors • Civil Engineers • GIS

N.T.S.

West Ontario Commerce Center Specific Plan • Development Agreement • Parcel 19738

DATE: 06/06/2018

EXHIBIT "F-3" SEWER IMPROVEMENTS

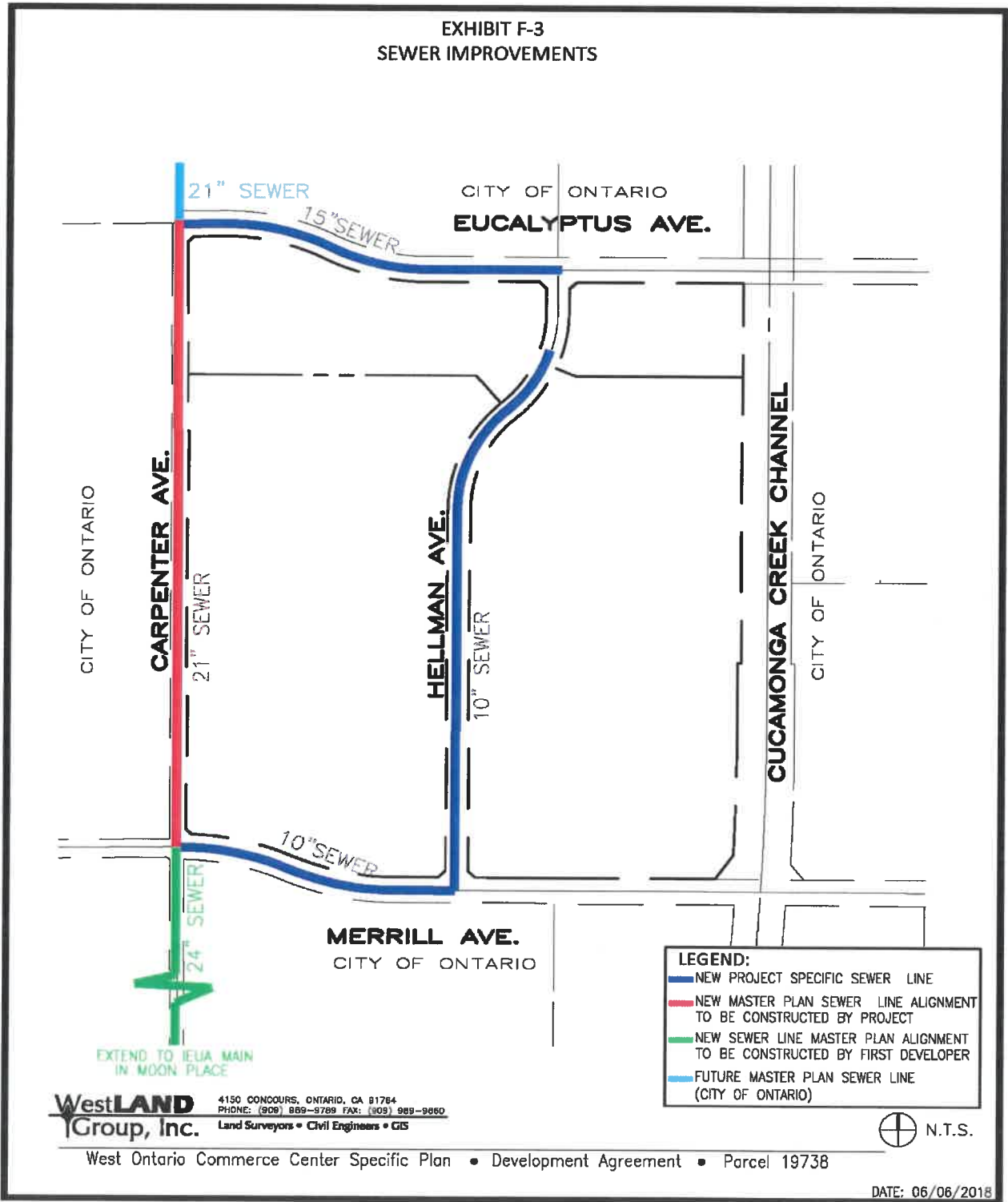
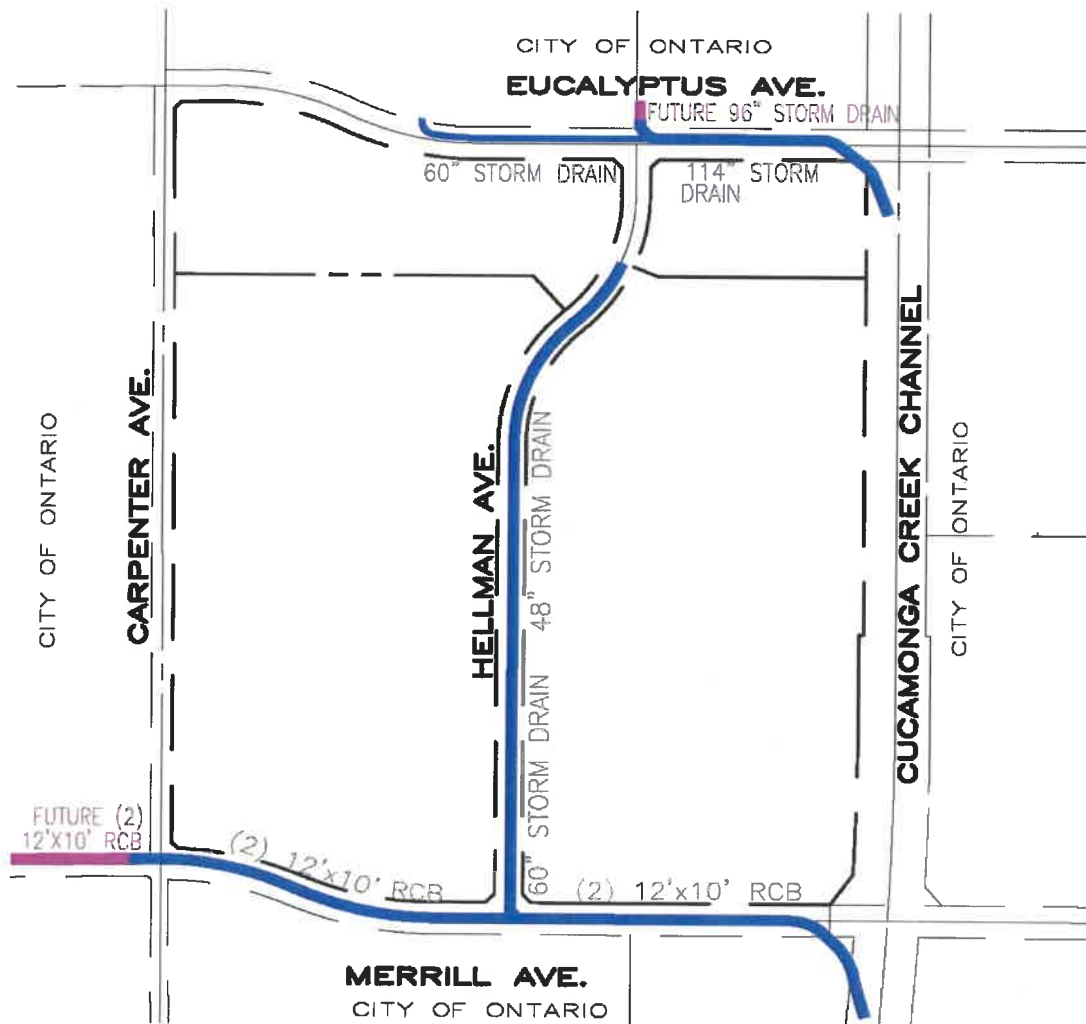


EXHIBIT "F-4" STORM DRAIN IMPROVEMENTS

EXHIBIT F-4
STORM DRAIN IMPROVEMENTS



LEGEND:
— NEW PUBLIC STORM DRAIN
— FUTURE PUBLIC STORM DRAIN

WestLAND Group, Inc.
 4150 CONCOURS, ONTARIO, CA 91754
 PHONE: (909) 989-8789 FAX: (909) 989-9660
 Land Surveyors • Civil Engineers • GIS

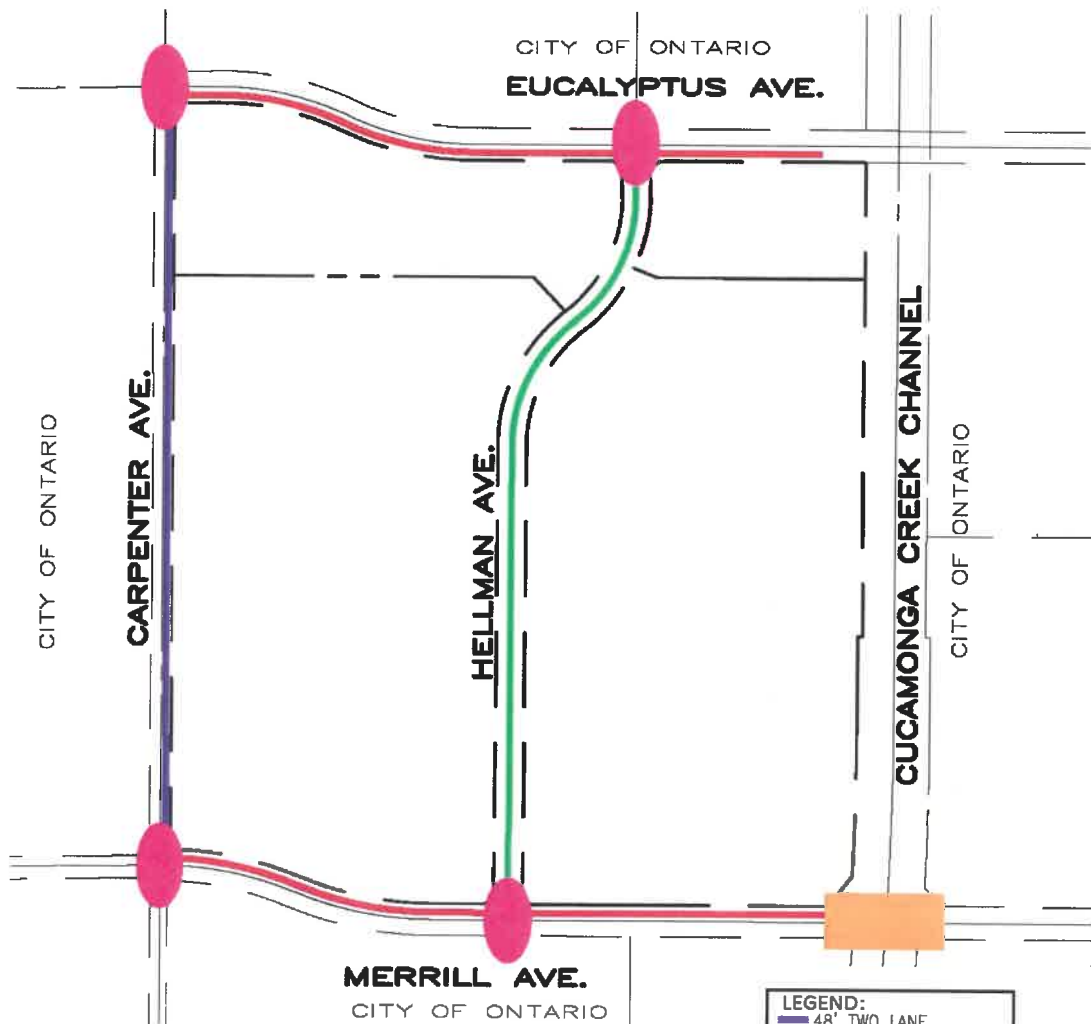
⊕ N.T.S.

West Ontario Commerce Center Specific Plan • Development Agreement • Parcel 19738

DATE: 06/06/2018

EXHIBIT "F-5A" STREET AND BRIDGE IMPROVEMENTS

DEVELOPMENT AGREEMENT EXHIBIT F-5A STREET AND BRIDGE IMPROVEMENTS



NOTES:

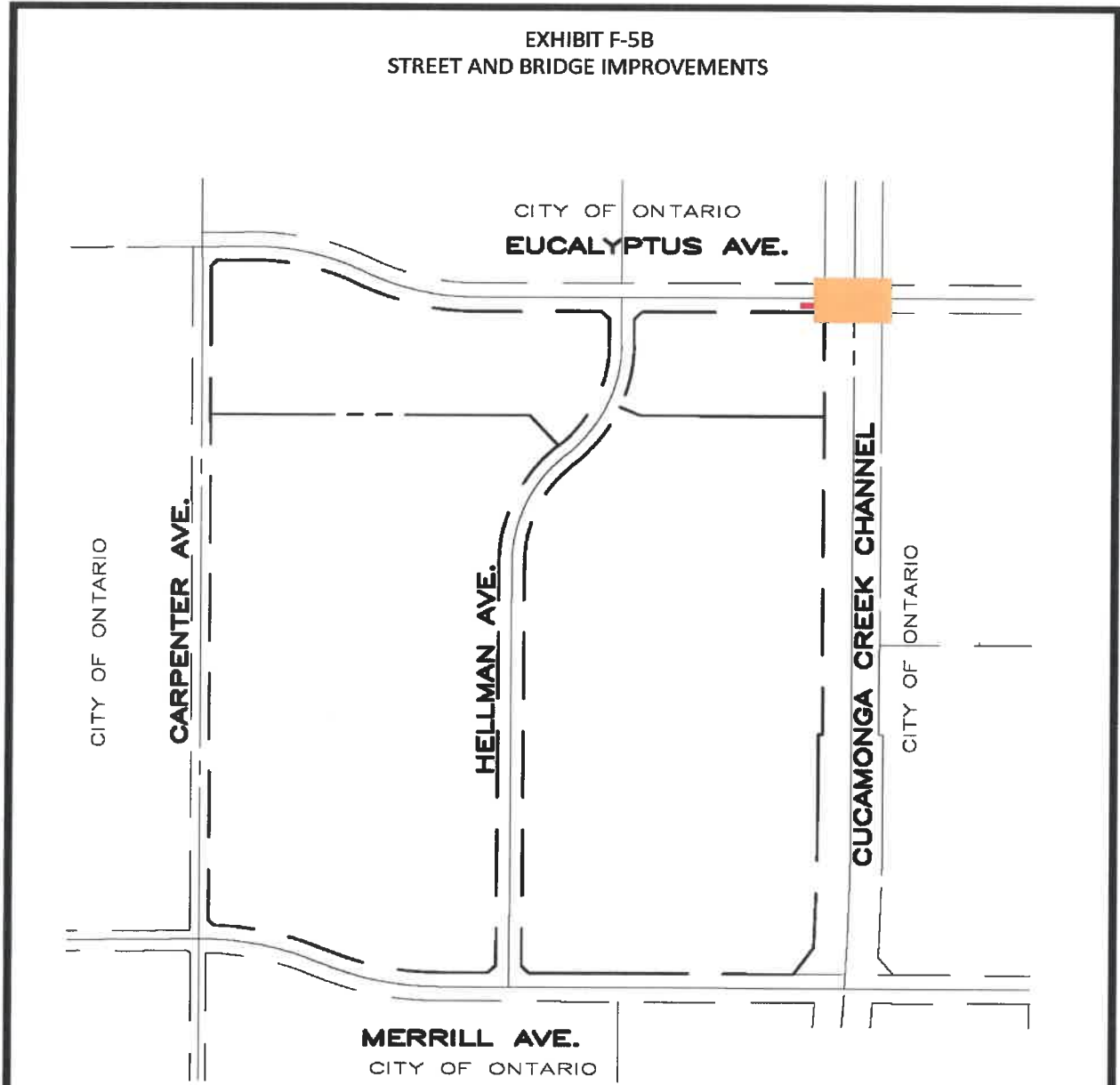
- ALL ACCESS POINTS SHALL CONFORM TO TRAFFIC & TRANSPORTATION GUIDELINES AND TO BE SUBJECT TO CITY APPROVAL.
- SEE PAGE 2 AND 3 FOR IMPROVEMENT LIMITS.
- SEE PAGE 6 FOR BRIDGE IMPROVEMENT LIMITS.
- TRAFFIC SIGNALS WILL BE INTERCONNECTED.
- WB-67 SHALL BE DESIGNED FOR VEHICLE TRUCK ACCESS AND MOVEMENTS.

LEGEND:	
—	48' TWO LANE LOCAL INDUSTRIAL
—	64' COLLECTOR
—	84' FOUR LANE COLLECTOR
●	TRAFFIC SIGNAL
■	BRIDGE IMPROVEMENTS

WestLAND Group, Inc.
4150 CONCOURS, ONTARIO, CA 91764
 PHONE: (909) 889-9788 FAX: (909) 889-8860
 Land Surveyors • Civil Engineers • GIS

⊕ N.T.S.

**EXHIBIT "F-5B
STREET AND BRIDGE IMPROVEMENTS**



- NOTES:**
- ALL ACCESS POINTS SHALL CONFORM TO TRAFFIC & TRANSPORTATION GUIDELINES AND TO BE SUBJECT TO CITY APPROVAL.
 - SEE PAGE 7 FOR BRIDGE IMPROVEMENT LIMITS.
 - SEE PAGE 2 AND 3 FOR IMPROVEMENT LIMITS.
 - TRAFFIC SIGNALS WILL BE INTERCONNECTED.
 - WB-67 SHALL BE DESIGNED FOR VEHICLE TRUCK ACCESS AND MOVEMENTS.

LEGEND:

- 84' FOUR LANE COLLECTOR
- BRIDGE IMPROVEMENTS

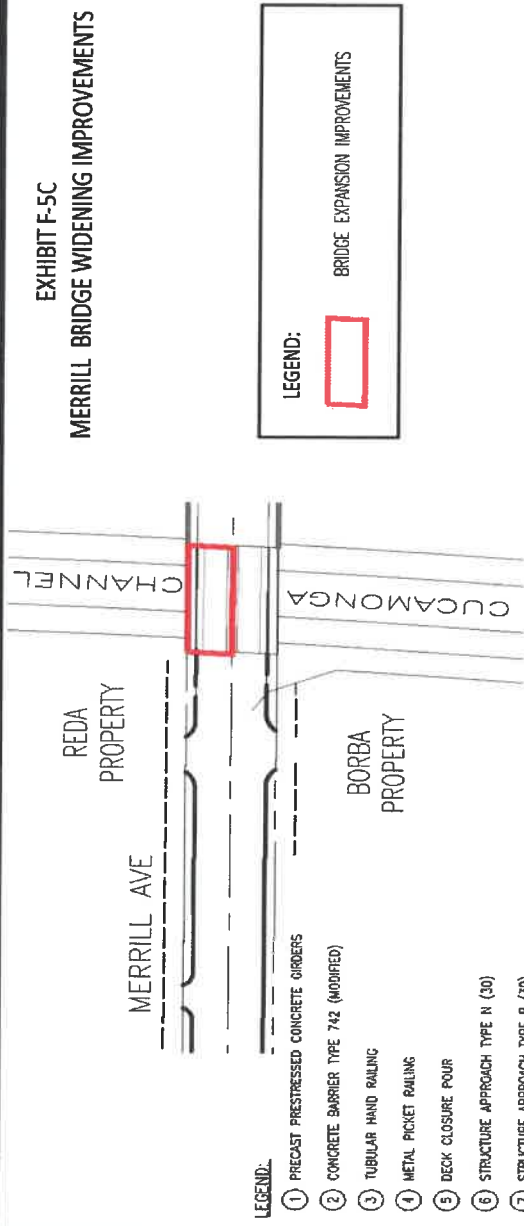
WestLAND 4150 CONCOURS, ONTARIO, CA 91784
Group, Inc. PHONE: (909) 988-9789 FAX: (909) 988-9660
 Land Surveyors • Civil Engineers • GIS

⊕ N.T.S.

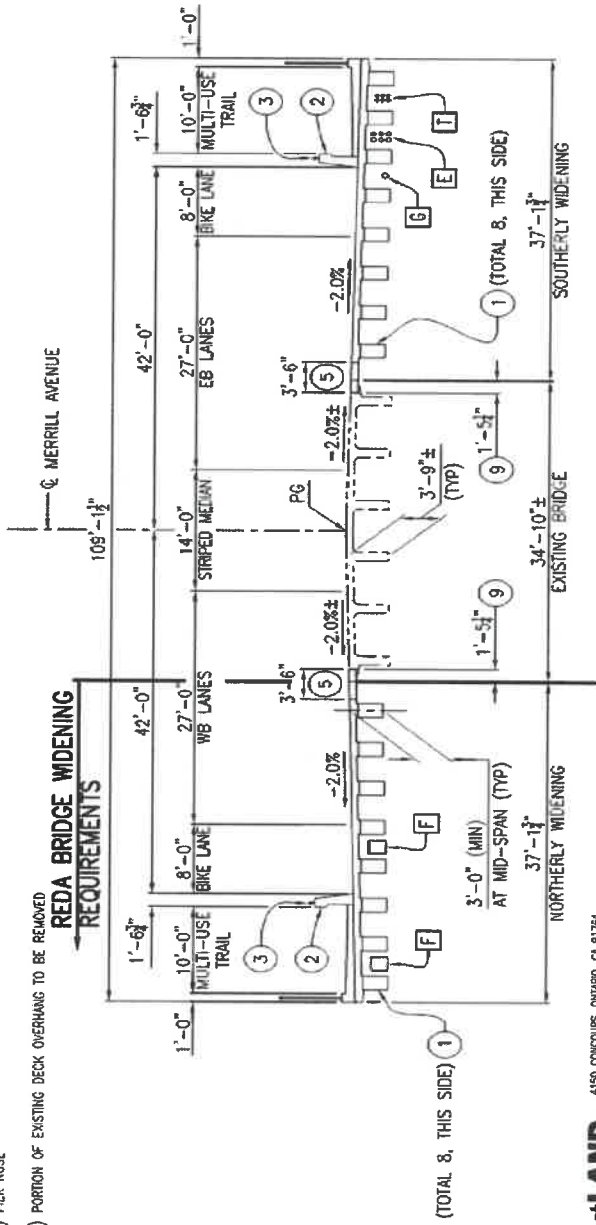
EXHIBIT "F-5C"

MERRILL AVENUE BRIDGE WIDENING IMPROVEMENTS

EXHIBIT F-5C MERRILL BRIDGE WIDENING IMPROVEMENTS



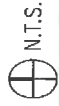
- LEGEND:**
- ① PRECAST PRESTRESSED CONCRETE ORDERS
 - ② CONCRETE BARRIER TYPE 742 (MODIFIED)
 - ③ TUBULAR HAND RAILING
 - ④ METAL PICKET RAILING
 - ⑤ DECK CLOSURE POUR
 - ⑥ STRUCTURE APPROACH TYPE N (30)
 - ⑦ STRUCTURE APPROACH TYPE R (30)
 - ⑧ PIER NOSE
 - ⑨ PORTION OF EXISTING DECK OVERHANG TO BE REMOVED



WestLAND Group, Inc.
 4150 CONCORDS, ONTARIO, CA 91764
 PHONE: (909) 986-9728 FAX: (909) 986-9860
 Land Surveyors • Civil Engineers • GIS

TYPICAL SECTION

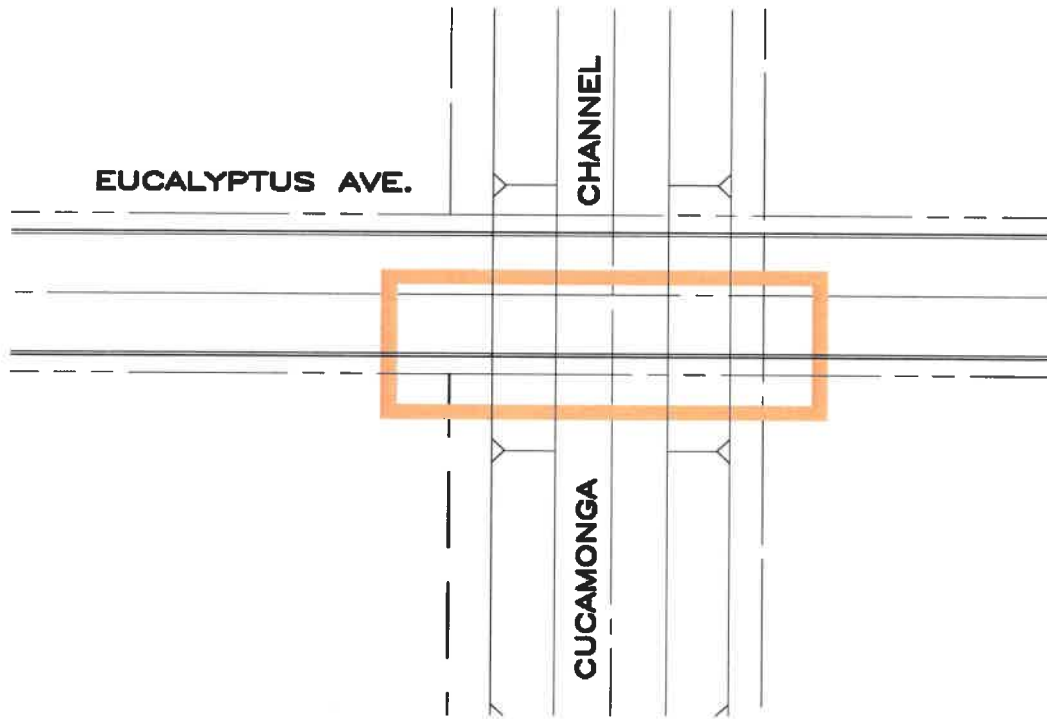
Sheet 6 OF 7 West Ontario Commerce Center Specific Plan • Development Agreement • Parcel 19738



DATE: 06/06/2018

EXHIBIT "F-5D"
Eucalyptus Avenue Bridge Improvements

EXHIBIT F-5D
EUCALYPTUS BRIDGE IMPROVEMENTS



LEGEND:
 NEW BRIDGE IMPROVEMENTS

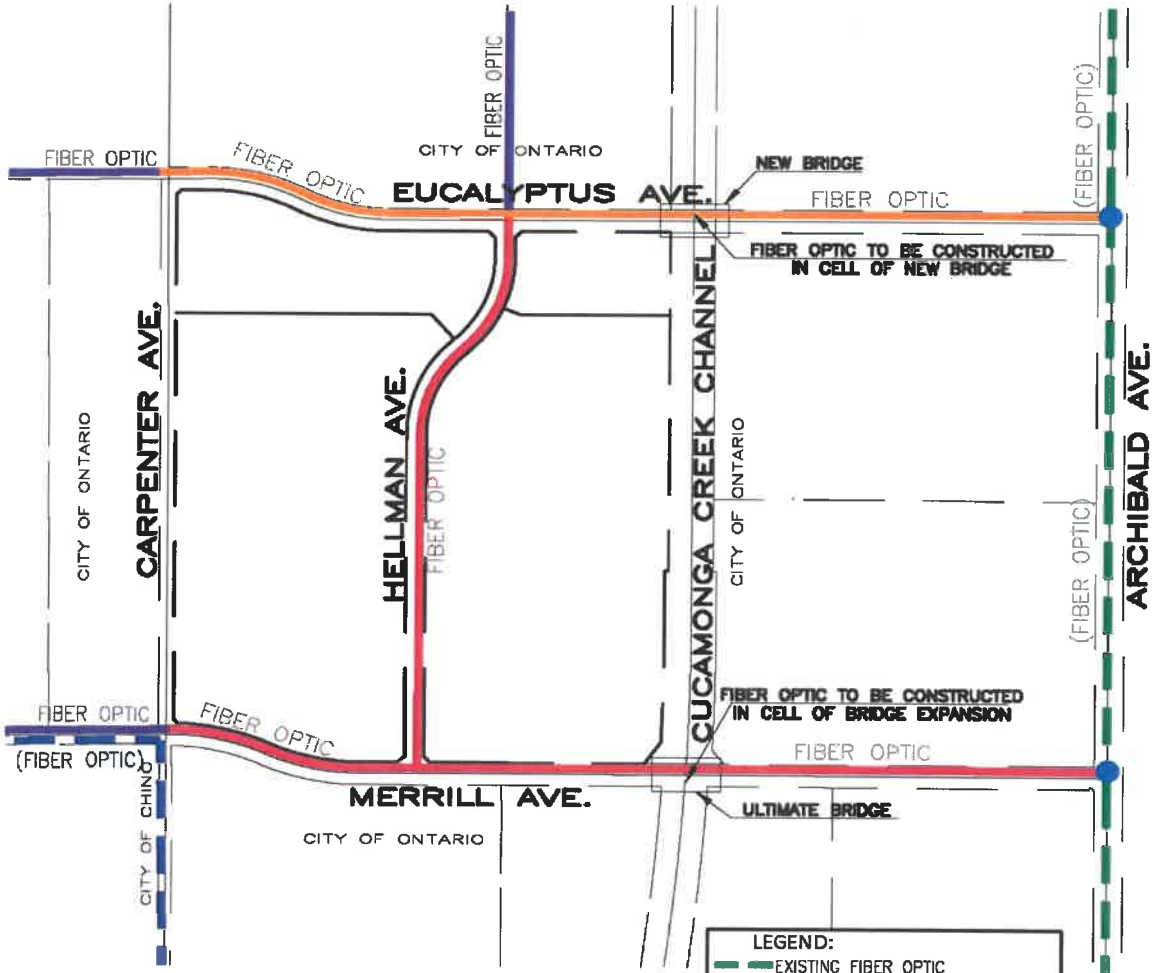
WestLAND
Group, Inc.

4150 CONCOURS, ONTARIO, CA 91764
PHONE: (909) 888-6788 FAX: (909) 888-8080
Land Surveyors • Civil Engineers • GIS

 N.T.S.

EXHIBIT "F-6" Fiber Optic Communications

EXHIBIT F-6
FIBER OPTIC IMPROVEMENTS



LEGEND:

- EXISTING FIBER OPTIC (CITY OF ONTARIO)
- NEW PRIMARY RING FIBER OPTIC (CITY OF ONTARIO)
- NEW LATERAL FIBER OPTIC (CITY OF ONTARIO)
- FUTURE FIBER OPTIC (CITY OF ONTARIO)
- EXISTING FIBER OPTIC (CITY OF CHINO)
- POINT OF CONNECTION

WestLAND Group, Inc.
 4150 CONCOURS, ONTARIO, CA 91764
 PHONE: (909) 989-9789 FAX: (909) 989-9880
 Land Surveyors • Civil Engineers • GIS

N.T.S.

EXHIBIT "G"
TO DEVELOPMENT AGREEMENT

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section ____ of this Agreement between the City of Ontario, a California municipal corporation, and _____, a _____ company, hereinafter called "OWNER", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Agreement", the City of Ontario hereby certifies based on CITY receipt of payment of OWNER's share of the funding for the Phase 2 Water Improvements, that OWNER is entitled to the following Net MDD Water Availability.

Amount of Net MDD _____ gpm

Scott Ochoa, City Manager

Dated: _____

Exhibit "H"

FORM OF CERTIFICATE OF REGIONAL DIF CREDIT

Pursuant to Section 4.5.2 of this Agreement by and between the City of Ontario and _____, dated _____, 2018, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement", the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: \$ _____

Scott Ochoa, City Manager

Dated: _____

Exhibit "I-1"

ONTARIO RANCH WATER SUPPLY PHASING PLAN

<u>Phase 2</u>	<u>Water Availability Equivalency</u>	<u>Estimated Net MDD Available¹</u>
Phase 2 A		
<u>Supply & Storage</u>		
1. 1 - Additional Ground Water Well and Collection lines - Design and Construction	8,250 gpm ²	7,750 gpm²
<u>Pipelines (Transmission & Distribution)²</u>		
2. 925 Zone Transmission lines – Design and Construction		
3. Temporary Pressure Reducing Station ³ – Design and Construction		
Phase 2B		
<u>Supply & Storage</u>		
4. 1 – Additional Ground Water Well and Collection lines – Design and Construction	10,500 gpm ²	9,860 gpm²
5. 1 – 6 million gallon Reservoir – 925 Zone – Design and Construction		

(1) Upon Completion of the construction of all of the improvements described for each Phase a Certificate of Net MDD Availability shall be issued to Developer for the corresponding amount of Net MDD. Net MDD means the maximum daily demand on the potable water supply, net of the water requirements for public schools and parks. The Water Availability Equivalency includes the estimated requirements for public schools and parks. The amount of Net MDD specified is the cumulative amount for which building permits may be issued upon funding of the corresponding and all preceding Phases of improvements.

(2) The ability of a particular development to utilize Net MDD assigned to it by the Developer will require the completion of design and construction of Master-planned potable and recycled water transmission and distribution pipelines for the respective pressure zone. Other factors may include its location, the particular land use and Water Availability Equivalents assigned to it as specified in Exhibit C-2.

(3) Pressure reducing stations are a component of the pipeline transmission and distribution system.

EXHIBIT "I-2"

Available Water Supply - See Exhibit C-1R for Net MDD Available

Table A - Water Demand Equivalents By Land Use

The Ontario Plan Land Use	Potable Water			Recycled Water	
	Water Demand Factor (ADD)		Water Demand Equivalents (WDE) ²	Recycled Water Demand Factor ¹ (ADD)	Recycled Water Demand Of Total Water Demand
	(gpd/du)	(gpd/ac)	(gpm/unit)	(gpd/ac)	(%)
Detached Dwellings (less than 5 units per acre)	544		0.57	900	28%
Detached or Attached Dwellings (between 5 and 11 units per acre)	464		0.48	1,000	21%
Attached Dwellings (between 11 and 25 units per acre)	323		0.34	1,500	18%
High Density Dwellings (25+ units per acre)	152		0.16	1,500	27%
Commercial Lodging	150		0.16	1,700	50%
Retail/Services Uses		2,200	2.29	2,300	51%
Office Uses		3,400	3.54	2,300	40%
Business Park Uses		2,200	2.29	2,200	50%
Industrial Uses		2,000	2.08	2,200	52%
Institutional Use		2,200	2.29	1,600	42%
Parks		1,000	1.04	1,400	58%
Schools		3,500	3.65	1,600	31%

¹Recycled Water Demands include irrigation for right-of-way (medians and parkways), neighborhood edge, pocket parks, and common areas.

² The WDE is based on the Maximum Day Demand (MDD) with a peaking factor of 1.5 in the NMC for all land use categories.

Table B - Example Water Supply Calculation

Land Use	Acres ¹ (gross)	Residential Units	WDE Factor (gpm)	Potable MDD (gpm)	Recycled Water ADD (gpm)
Development					
Detached Dwellings (less than 5 units per acre)	1,284	5,061	0.57	2,868	803
Detached or Attached Dwellings (between 5 and 11 units per acre)	369	2,530	0.48	1,223	256
Attached Dwellings (between 11 and 25 units per acre)	194	3,410	0.34	1,147	202
Retail/Services Uses (per acre) ²	104		2.29	239	166
TOTAL	1,950	11,001		5,477	1,428

Three (3) Wells Are required to Support this example, assuming each well produces 2,000 gpm and connection to the Recycled Water System maximizing Recycled Water Use.

¹ Residential Acres are estimated based on the weighted average derived from the average number of units per land use category.

² Commercial acreage is calculated from a total square footage of 1,361,000 SF with an average Floor to Area Ratio (FAR) of 0.30 for commercial services in The Ontario Plan.

Exhibit "J"

FORM OF PLUME DISCLOSURE LETTER

CITY OF



ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

March 2017

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHNER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

**DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 *et seq.*

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR


SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA17-002) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20081 (FILE NO. PMTT17-003) TO SUBDIVIDE 44.98 ACRES OF LAND INTO 76 NUMBERED LOTS AND 62 LETTERED LOTS FOR RESIDENTIAL AND COMMERCIAL USES, PUBLIC/PRIVATE STREETS, LANDSCAPE NEIGHBORHOOD EDGES AND COMMON OPEN SPACE PURPOSES FOR A PROPERTY LOCATED ON THE NORTHEAST CORNER OF ONTARIO RANCH ROAD AND HAVEN AVENUE, WITHIN THE MIXED USE DISTRICT PLANNING AREA 6A (REGIONAL COMMERCIAL AND STAND ALONE RESIDENTIAL OVERLAY) OF THE RICH HAVEN SPECIFIC PLAN (APNS: 218-211-02 AND 218-211-05)

RECOMMENDATION: That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA17-002, on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, to establish the terms for the development of Tentative Tract Map 20081 (File No. PMTT17-003).

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

FISCAL IMPACT: The proposed Development Agreement will provide funding from a community facilities district for additional City services required to support the Rich Haven Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

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

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

Submitted to Council/O.H.A. 09/04/2018
Approved: _____
Continued to: _____
Denied: _____

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BACKGROUND: On August 21, 2018, the City Council introduced and waived further reading of an ordinance approving the Development Agreement. On December 4, 2007, the City Council approved the Rich Haven Specific Plan (File No. PSP05-004) and certified the Environmental Impact Report (EIR). The Specific Plan established the land use designations, development standards, and design guidelines for approximately 512 acres of land, which included the potential development of 4,256 residential units and 889,200 square feet of commercial/office.

In 2010, The Ontario Plan (TOP) was adopted by the City Council. TOP Policy Plan (General Plan) Land Use Plan (Policy Plan Exhibit LU-01) changed the land use designations within certain areas of the Rich Haven Specific Plan. To bring the Rich Haven Specific Plan into conformance with TOP Policy Plan, an amendment to the Rich Haven Specific Plan (File No. PSPA16-001) was processed and approved by the City Council on March 15, 2016. The Amendment included updates to the Rich Haven Specific Plan Land Use Plan, the housing product types, exhibits and language to reflect the proposed land use changes and overall TOP Policy Plan consistency.

In February 2018, the City Council approved an amendment (File No. PSPA16-005) to the Rich Haven Specific Plan to annex 72.3 acres of land located on the southeast corner of Haven Avenue and Ontario Ranch Road into the Mixed-Use district of the Rich Haven Specific Plan, including updates to the development standards, exhibits and text changes to reflect the proposed annexation and TOP Policy Plan compliance. With the annexation, the Specific Plan maximum residential unit count increased to 7,194 residential units.

The applicant, Brookcal Ontario, LLC, has submitted a Tentative Tract Map 20081 (File No. PMTT17-003) to subdivide 44.98 acres of land into 76 residential numbered lots and 62 lettered lots for residential and commercial uses, public/private streets, landscape neighborhood edges and common open space, within the Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Brookcal Ontario, LLC, has requested that the City enter into negotiations to create a Development Agreement (“Agreement”).

The Agreement proposes to include land located on the northeast corner of Ontario Ranch Road and Haven Avenue within the Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan, as shown in **Exhibit A (Rich Haven Specific Plan – Land Use Map)**. The Agreement grants Brookcal Ontario, LLC, a vested right to develop Tentative Tract Map 20081, with the potential development of up to 485 residential units and 4.13 acres of commercial development, as long as Brookcal Ontario, LLC, complies with the terms and conditions of the Rich Haven Specific Plan and Environmental Impact Report.

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

- Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, police, fire, open space/parks etc.);

- Public Service Funding to ensure adequate provisions of public services (police, fire and other public services);
- The creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities;
- The Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and
- Public infrastructure improvements required to support the development of TT20081.

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

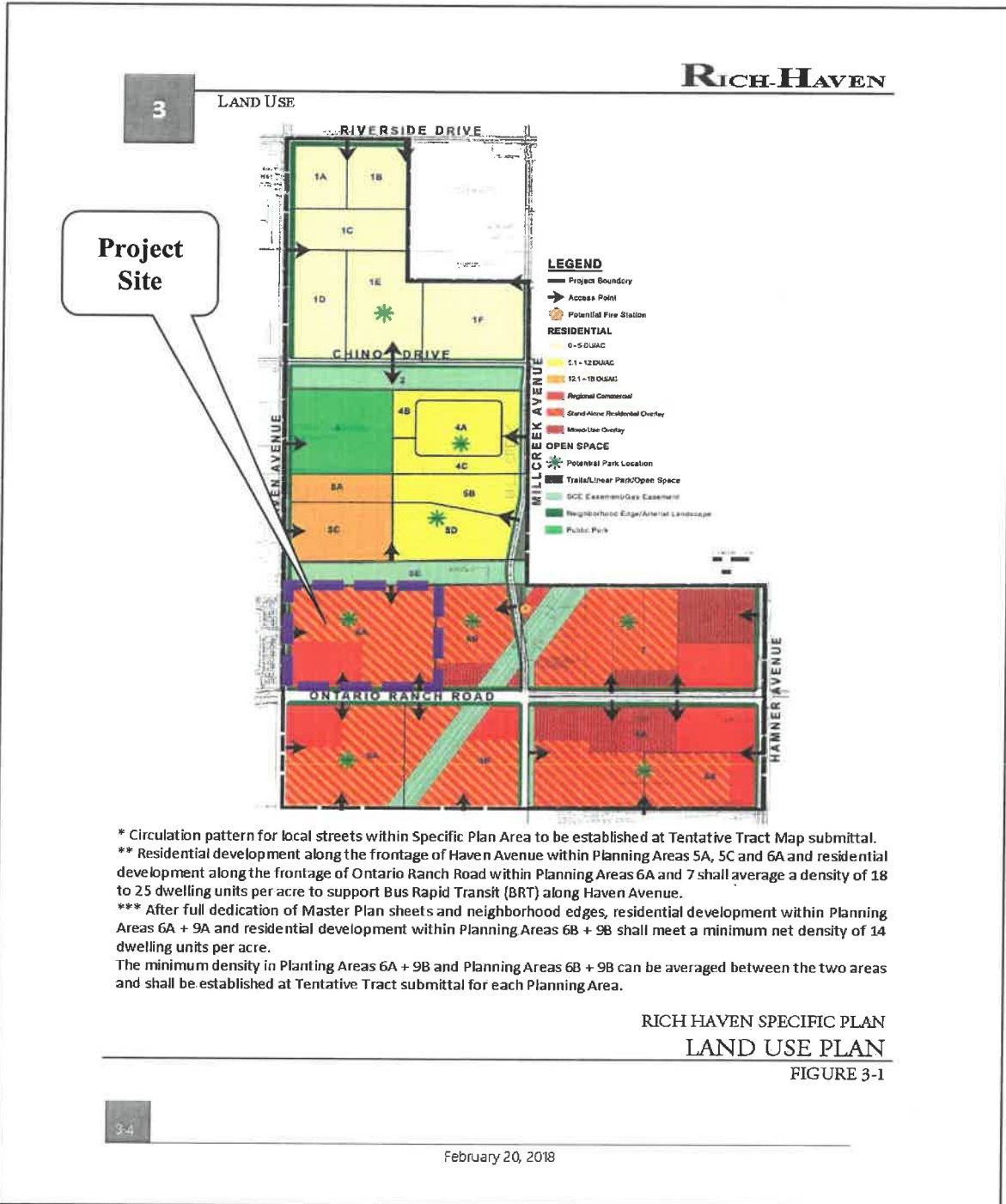
In considering the application at their meeting of July 24, 2018, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments and, with a 7 to 0 vote (Resolution No. PC18-070), recommended approval of the Development Agreement to the City Council.

HOUSING ELEMENT COMPLIANCE: Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and allocates a total of 4,256 dwelling units for the Rich Haven Specific Plan and 1,524 dwelling units within the Moderate Income range (10-24 du/ac). The project is proposing 485 units within Moderate Income range consistent and within the specified ranges and unit counts allowed within the Available Land Inventory.

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

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously analyzed in an addendum to The Rich Haven Specific Plan (File No. PSP05-004) EIR (SCH# 2006051081) that was certified by the City Council on December 4, 2007 and an Addendum to The Ontario Plan (File No. PGPA06-001) EIR (SCH# 2008101140) certified by City Council on January 27, 2010. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A" RICH HAVEN SPECIFIC PLAN



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20081 (FILE NO. PMTT17-003) TO SUBDIVIDE 44.98 ACRES OF LAND INTO 76 NUMBERED LOTS AND 62 LETTERED LOTS FOR RESIDENTIAL AND COMMERCIAL USES, PUBLIC/PRIVATE STREETS, LANDSCAPE NEIGHBORHOOD EDGES AND COMMON OPEN SPACE PURPOSES FOR A PROPERTY LOCATED ON THE NORTHEAST CORNER OF ONTARIO RANCH ROAD AND HAVEN AVENUE, WITHIN THE MIXED USE DISTRICT PLANNING AREA 6A (REGIONAL COMMERCIAL AND STAND ALONE RESIDENTIAL OVERLAY) OF THE RICH HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 0218-211-02 AND 0218-211-05.

WHEREAS, CALIFORNIA GOVERNMENT CODE SECTION 65864 NOW provides, in pertinent part, as follows:

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, attached to this Ordinance, marked Attachment “A” and incorporated herein by this reference, is the proposed Development Agreement between the City of Ontario and Brookcal Ontario, LLC, for the potential development of up to 485 residential units (File No. PMTT17-003/TT 20081) and 4.13 acres of commercial development on 44.98 acres of land located on the northeast corner of Ontario Ranch Road and Haven Avenue, within the Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on October 23, 2007, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. PC07-125 recommending City Council certification of the Rich-Haven EIR and Issued Resolution No. PC07-127 recommending to City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004); and

WHEREAS, on December 4, 2007, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2007-145 to certify the Rich-Haven Specific Plan EIR (SCH #2006051081); and

WHEREAS, on December 4, 2007, the City Council of the City of Ontario conducted a duly noticed public hearing and adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan; and

WHEREAS, on February 23, 2016, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR and Issued Resolution No. PC16-004 recommending to City Council approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001); and

WHEREAS, on March 15, 2016, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR; and

WHEREAS, on March 15, 2016, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan; and

WHEREAS, on January 23, 2018, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC18-014 recommending City Council adoption of an Addendum to the Rich-Haven EIR and issued Resolution PC18-015 recommending to City Council approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-005); and

WHEREAS, on February 20, 2018, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2018-017 for the adoption of an Addendum (File No. PSPA16-005) to the Rich-Haven Specific Plan EIR; and

WHEREAS, on February 20, 2018, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2018-018 approving an Amendment (File No. PSPA16-005) to the Rich-Haven Specific Plan; and

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

WHEREAS, the environmental impacts of this project were previously analyzed in an addendum to The Rich Haven Specific Plan (File No. PSP05-004) EIR (SCH# 2006051081) that was certified by the City Council on December 4, 2007, and an Addendum to The Ontario Plan (File No. PGPA06-001) EIR (SCH# 2008101140) certified by City Council on January 27, 2010. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on July 24, 2018 the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 7 to 0 to recommend approval (Resolution No. PC18-070) of the Development Agreement to the City Council; and

WHEREAS, on August 21, 2018, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously adopted Rich-Haven Specific Plan EIR (SCH# 2006051081) and supporting documentation. Based upon the facts and information contained in the Rich-Haven Specific Plan EIR (SCH# 2006051081) and supporting documentation, the City Council finds as follows:

a. The previous Rich-Haven Specific Plan EIR (SCH# 2006051081) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The previous Rich-Haven Specific Plan EIR (SCH# 2006051081) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The previous Rich-Haven Specific Plan EIR (SCH# 2006051081) reflects the independent judgment of the City Council; and

d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference; and

e. The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Rich-Haven Specific Plan EIR (SCH# 2006051081), and all mitigation measures previously adopted with the Rich-Haven Specific Plan EIR (SCH# 2006051081), are incorporated herein by this reference.

SECTION 2. *Subsequent or Supplemental Environmental Review Not Required.* Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental to the Rich-Haven Specific Plan EIR (SCH# 2006051081) is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Rich-Haven Specific Plan EIR (SCH# 2006051081) that will require major revisions to the Rich-Haven Specific Plan EIR (SCH# 2006051081) 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 Rich-Haven Specific Plan EIR (SCH# 2016111009) was prepared, that will require major revisions to the Rich-Haven Specific Plan EIR (SCH# 2006051081) 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 Rich-Haven Specific Plan EIR (SCH# 2006051081) was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Rich-Haven Specific Plan EIR (SCH# 2006051081); or

(b) Significant effects previously examined will be substantially more severe than shown in the Rich-Haven Specific Plan EIR (SCH# 2006051081); or

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

(d) Mitigation measures or alternatives considerably different from those analyzed in the Rich-Haven Specific Plan EIR (SCH# 2006051081) would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and allocates a total of 4,256 dwelling units for the Rich Haven Specific Plan and 1,524 dwelling units within the Moderate Income range (10-24 du/ac). The project is proposing 485 units within Moderate Income range consistent and within the specified ranges and unit counts allowed within the Available Land Inventory.

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

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

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

a. The Development Agreement applies to 44.98 acres of land located on the northeast corner of Ontario Ranch Road and Haven Avenue, within the Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan, and is presently vacant; and

b. WHEREAS, the property to the north of the Project Site is within the SCE Utility Easement and is presently used for as utility corridor with transmission towers. The properties to the east are within Planning Area 6B (Regional Commercial/Mixed Use) of the Rich-Haven Specific Plan, and is presently vacant and previously used for dairy and agricultural uses and are developed with residential and agricultural land uses. The property to the south is within Planning Areas 9A and 9B (Regional Commercial/Mixed Use) of the Rich-Haven Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the west is within the Planning Area 10A of The Avenue Specific Plan and is developed with single family homes; and

c. The Development Agreement establishes parameters for the development of Tentative Tract Map 20081 within the Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan for the potential development of 485 residential units. The Development Agreement also grants Brookcal Ontario, LLC, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Rich Haven Specific Plan; and

d. The Development Agreement focuses on Tentative Tract Map 20081 that proposes to subdivide 44.98 acres of land into 76 numbered lots and 62 lettered lots for residential and commercial uses, public/private streets, landscape neighborhood edges and common open space purposes for a property located on the northeast corner of Ontario Ranch Road and Haven Avenue, within the Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan; and

e. The Development Agreement will provide for the development of up to 485 single family units as established for Mixed Use District Planning Area 6A (Regional Commercial and Stand Alone Residential Overlay) of the Rich Haven Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously analyzed in an addendum to The Rich Haven Specific Plan (File No. PSP05-004) EIR (SCH# 2006051081) that was certified by the City Council on December 4, 2007 and an Addendum to The Ontario Plan (File No. PGPA06-001) EIR (SCH# 2008101140) certified by City Council on January 27, 2010. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

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

SECTION 6. *City Council Action.* Based upon the findings and conclusions set forth in paragraphs 1, 2, 3, 4, and 5 above, the City Council hereby APPROVES the Development Agreement (Attachment "A") subject to each and every condition set forth in the Rich-Haven Specific Plan and EIR, incorporated by this reference.

SECTION 7. *Indemnification.* The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 8. *Custodian of Records.* The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 9. *Severability.* If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted

this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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

SECTION 11. *Publication and Posting.* The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California, within 15 days following the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 4th day of September 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3116 was duly introduced at a regular meeting of the City Council of the City of Ontario held August 21, 2018 and adopted at the regular meeting held September 4, 2018 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3116 duly passed and adopted by the Ontario City Council at their regular meeting held September 4, 2018 and that Summaries of the Ordinance were published on August 28, 2018 and September 11, 2018, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

**Development Agreement
Between
The City of Ontario and Brookcal Ontario, LLC
File No. PDA17-002
*(Document follows this page)***

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

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

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

BrookCal Ontario, LLC

a California limited liability company

_____, 2018

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA17-002

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2018 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario, LLC, California limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in The Rich Haven Specific Plan (State Clearinghouse No. 2006051081 (the "FEIR")). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

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

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

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

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

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

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

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

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and

Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21st day of August 2012.

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

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

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

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

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4 For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use

permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

1.1.9 "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10 "Existing Development Approvals" means all development approvals approved or issued prior to the Effective Date. Existing development approvals includes the Approvals incorporated herein as Exhibit "C" and all other Approvals which are a matter of public record on the Effective Date.

1.1.11 "Existing Land Use Regulations" means all Land Use regulations in effect on the Effective Date. Existing Land Use regulations includes the regulations incorporated herein as Exhibit "D" and all other land use regulations that are in effect and a matter of public record on the Effective Date.

1.1.12 "General Plan" means the General Plan adopted on January 27, 2010.

1.1.13 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 20018 and as further described in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.14 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;

- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

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

1.1.16 "Model Units" means a maximum of twenty-three (23) model units, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.17 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

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

1.1.19 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

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

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

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Rich Haven Specific Plan."

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

1.1.24 “Subsequent Development Approvals” means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

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

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

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” — Legal Description of the Property.

Exhibit “B” — Map showing Property and its location.

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — (Not Used)

Exhibit “F” — Infrastructure Improvements Exhibits

Exhibit F-1 – Storm Drain Improvements

Exhibit F-2 - Sewer Improvements

Exhibit F-3 Water and Recycled Water Improvements

Exhibit F-4 Fiber Optic Communications System Improvements

Exhibit F-5 Street Improvements

Exhibit “G” - Form of Plume Disclosure Letter

2. GENERAL PROVISIONS.

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

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

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

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

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

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

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit G) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

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

assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Scott Ochoa, City Manager
City of Ontario
303 East "B" Street
Ontario California, California 91764

with a copy to:

John Brown, City Attorney
Best Best & Krieger

2855 East Guasti Road, Suite 400
Ontario CA 91761

If to OWNER:

Dave Bartlett
BrookCal Ontario, LLC
3200 Park Center Drive, Suite 1000
Costa Mesa, CA 92626
Email: Dave.Bartlett@Brookfieldrp.com
Phone: 714.200.1533

with a copy to:

Tim Roberts
BrookCal Ontario, LLC
3200 Park Center Drive, Suite 1000
Costa Mesa, CA 92626
Phone: (714) 200-2483

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

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

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its

police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

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

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibits "F" and Exhibits F-1 through F-5 are descriptions of the infrastructure improvements needed for the development of the Property ("the Infrastructure Improvement Exhibits").

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of twenty-three (23) Model Units, private common recreation facilities and sales facilities. CITY may issue a maximum of twenty-three (23) building permits for Model Units, private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from

time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

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

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the

residents of the project and/or of the immediate community from a condition perilous to their health or safety;

- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

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

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

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

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

this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of Storm Drain facilities from the Property to the connection with the County Line Channel as described in Exhibit F-1. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities to the Project.

3.7.2 OWNER agrees that development of the Project shall require the construction of Sewer Improvements for the Property as described in Exhibit F-2.

3.7.3 OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure as described in Exhibit F-3 consisting generally of the construction of the extension of permanent master planned water and recycled water utility improvements to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the water and recycled water Improvements as described in Exhibit F-3. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.4 OWNER also agrees to construct permanent master planned recycled water lines in Haven Avenue from Schaefer Avenue to Chino Avenue. The design of such recycled water Improvements shall be completed and OWNER shall initiate construction of such recycled water Improvements by September 1, 2018 and OWNER shall complete the construction of such recycled water Improvements by September 1, 2019.

3.7.5 OWNER agrees to that development of the Project shall require the construction of fiber optic communications system improvements as described on Exhibit F-4.

3.7.6 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit F-5.

3.7.7 OWNER agrees that NMC Builders shall be responsible for funding a portion of the design and construction of the remaining portion of an additional extension of master planned recycled water infrastructure in Riverside and Haven Avenues to be constructed by CITY. These remaining master planned recycled water Improvements in Haven Avenue shall also serve the Project. OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the NMC Builders portion of the remaining recycled water improvements in Haven Avenues known as the remaining "Phase 2 Recycled Water Improvements" within thirty (30) days after CITY requests such funds from NMC Builders. If OWNER has not deposited such amount, with NMC

Builders within thirty (30) days after CITY requests such funds from NMC Builders, then CITY shall be entitled to withhold issuance of any further permits (whether discretionary or ministerial) for the Project unless and until OWNER deposits the amount of OWNER's capital contribution with NMC Builders for the design and construction of the NMC Builders portion of the remaining Phase 2 Recycled Water System Improvements.

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

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written

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

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

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

4. PUBLIC BENEFITS.

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

4.2 Development Impact Fees.

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents). In order to meet this standard OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from CITY. Such areas shall either be dedicated to the City or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first building permit issued to OWNER.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within Ontario Ranch will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for Tract No. 20018 shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for Production Units for Tract No. 20018. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No. 20018.

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

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent, OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.4.2.1 through 4.4.2.1. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.3.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the

percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "Substantial rehabilitation" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "Affordability In-Lieu Fee". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars and Fifty-Three Cents (\$2.53) per square

foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars and Twenty-one Cents (\$2.21) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars and Fifty-Three Cents (\$2.53) and the Two Dollars and Twenty-one Cents (\$2.21) per square foot amounts shall automatically be increased annually, commencing on July 1, 2019, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

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

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the City shall be

required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.5.1.

4.6 Public Services Funding Fee.

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

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Nine Hundred and

Seventy-five Dollars (\$1,975.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Eighty-Seven dollars and fifty cents (\$987.50) per residential dwelling unit. The First Installment shall be based upon the "Maximum Development Density" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the effective date of this Development Agreement.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2019, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Eighty-Seven dollars and fifty cents (\$987.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2019. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty-Seven Cents (\$.57) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2019. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before

the Single Installment amount is automatically increased.

4.7 Net MDD/Water Availability Equivalents.

4.7.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not approve a final parcel map or tract map for the area of development within the Ontario Ranch served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, CITY's approval of the final Tract Map for Tract No. 20018. The amount of Net MDD Water Availability Equivalents required shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

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

4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.7 of this Agreement.

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

4.8.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water

treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.9 Maintenance of Common Areas and Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.10 Compliance with Public Benefits Requirements.

4.10.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that shall be \$1,622.00 per Single Family Detached Dwelling Unit, \$1,406.00 per Multiple-Family Dwelling Unit, \$1,179.00 per Gated Apartment Community Dwelling Unit, and \$.30 per square foot for Non-Residential buildings for the CITY's fiscal year 2018-19. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not

the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

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

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

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

- (3) Affirmative vote of at least three (3) members of the City Council.

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

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

(a) The time and place of the hearing;

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

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

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be

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

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

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

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

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

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

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

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

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.2 and 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default

and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

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

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

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any

violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

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

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

10. MORTGAGEE PROTECTION.

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

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

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

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

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

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the

State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

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

11.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

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

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

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

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

**BROOKCAL ONTARIO LLC
"OWNER"**

BrookCal Ontario LLC, a California limited liability company

By: _____

Name:

Title: Authorized Representative

Date: _____

"CITY"

CITY OF ONTARIO

By: _____

Scott Ochoa, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF STATE)
)
) SS.
COUNTY OF SAN BERNARDINO)

On _____, 2018 _____,
before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appeared _____,
Name of Signer(s)

personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

- Partner(s) Limited
- General

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

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

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

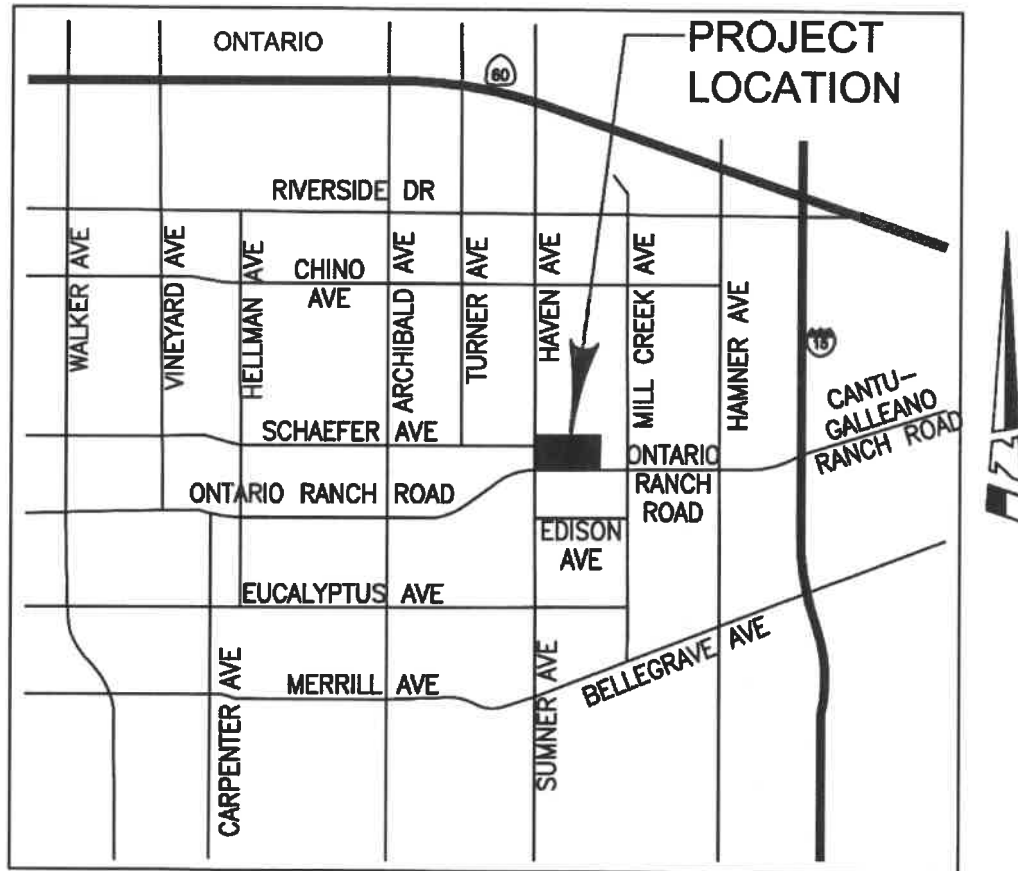
LEGAL DESCRIPTION

A PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

TOGETHER WITH THE WEST 10 ACRES OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location



VICINITY MAP
NOT TO SCALE

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT
Existing Development Approvals

On October 23, 2007, the Planning Commission:

- a) Issued Resolution No. issued Resolution PC07-125 recommending City Council certification of the Rich-Haven EIR.
- b) Issued Resolution PC07-127 recommending City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004).

On December 4, 2007, the City Council:

- a) Issued Resolution 2007-145 to certifying the Rich-Haven Specific Plan EIR (SCH #2006051081).
- b) Adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan.

On February 23, 2016, the Planning Commission:

- a) Issued Resolution PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR.
- b) Issued Resolution PC16-004 recommending approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001).

On March 15, 2016, the City Council:

- a) Issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR.
- b) Issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan.

On January 23, 2018, the Planning Commission:

- a) Issued Resolution PC18-014 recommending City Council adoption of an Addendum to the Rich-Haven EIR.
- b) Issued Resolution PC18-015 recommending to City Council approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-005)

On February 20, 2018 the City Council:

- a) Issued Resolution No. 2018-017 for the adoption of an Addendum (File No. PSPA16-005) to the Rich-Haven Specific Plan EIR.
- b) Issued Resolution No. 2018-018 approving an Amendment (File No. PSPA16-005) to the Rich-Haven Specific Plan.

On July 24, 2018, the Planning Commission:

- a) Issued Resolution No. 2018-069 for the approval of Tentative Tract Map 20081 (File No. PMTT17-003).

EXHIBIT “D”

TO DEVELOPMENT AGREEMENT Existing Land Use Regulations

These documents are listed for reference only:

1. The Rich-Haven Specific Plan (File No. PSP05-004) Environmental Impact Report, Resolution No. 2007-145.
2. The Rich-Haven Specific Plan (File No. PSP05-004), Ordinance No. 2884.
3. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-001) Environmental Impact Report, Resolution No. 2016-024.
4. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-001), Resolution No. 2016-025.
5. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-005) Environmental Impact Report, Resolution No. 2018-017
6. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-005), Resolution No. 2018-018.
7. City of Ontario Municipal Code
 - a. Six – Sanitation & Health
 - b. Seven – Public Works
 - c. Eight – Building Regulations
 - d. Nine – Development Code
 - e. Ten – Parks & Recreation

Exhibit "F" Required Infrastructure Improvements

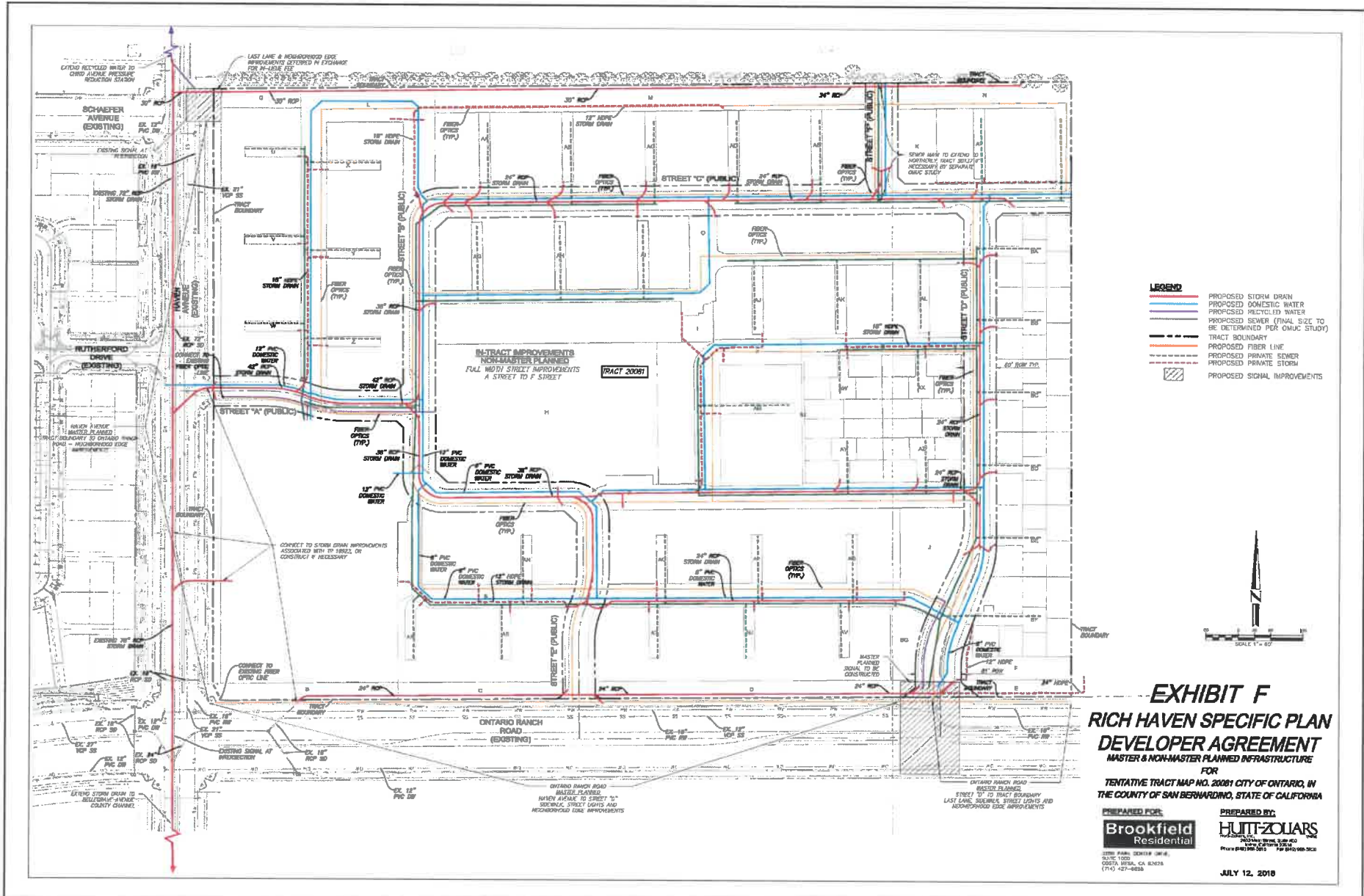


Exhibit "F-1" Required Infrastructure Improvements

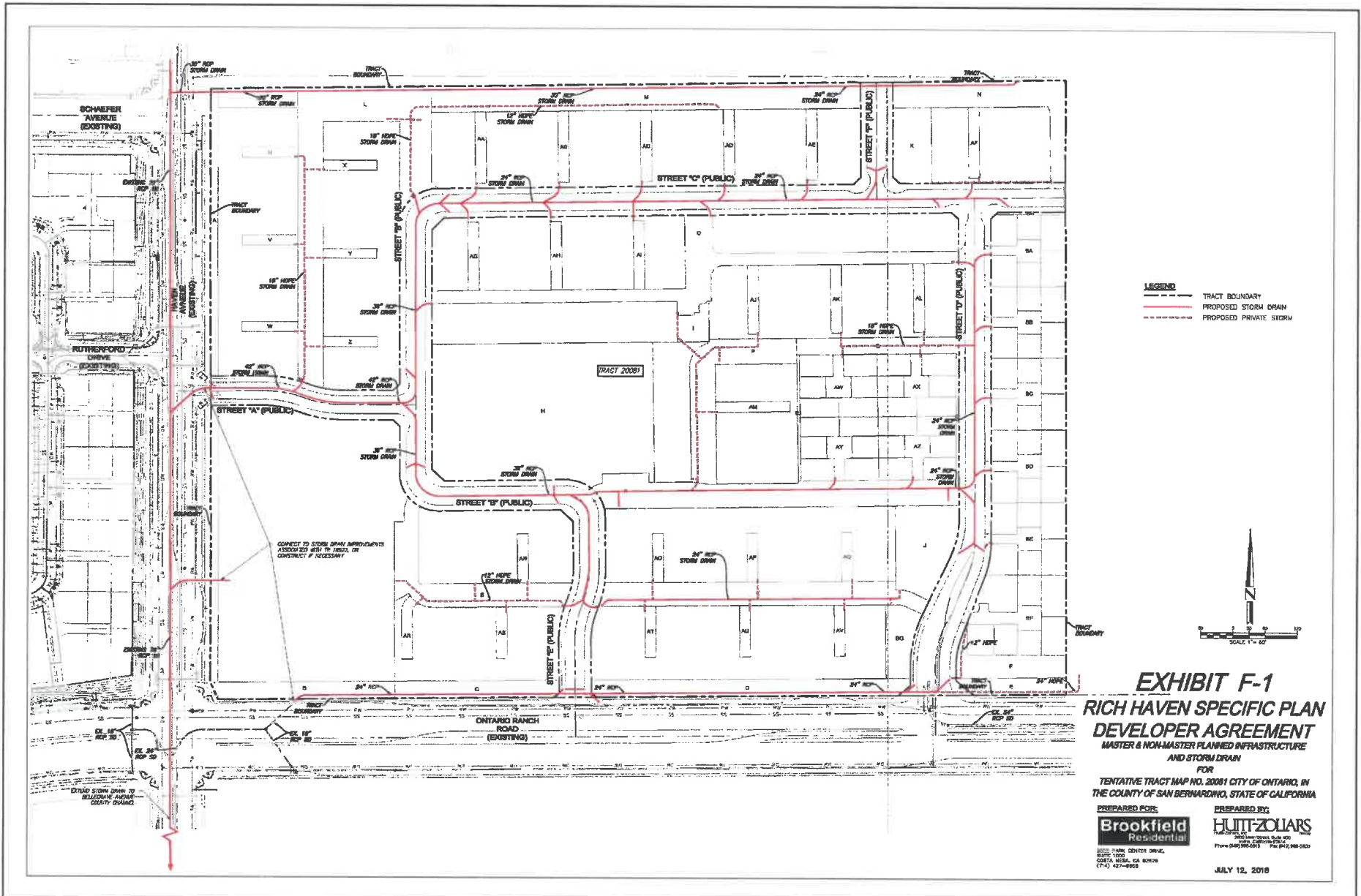


EXHIBIT F-1
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER & NON-MASTER PLANNED INFRASTRUCTURE
AND STORM DRAIN
FOR
TENTATIVE TRACT MAP NO. 20081 CITY OF ONTARIO, IN
THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

PREPARED FOR:
Brookfield Residential

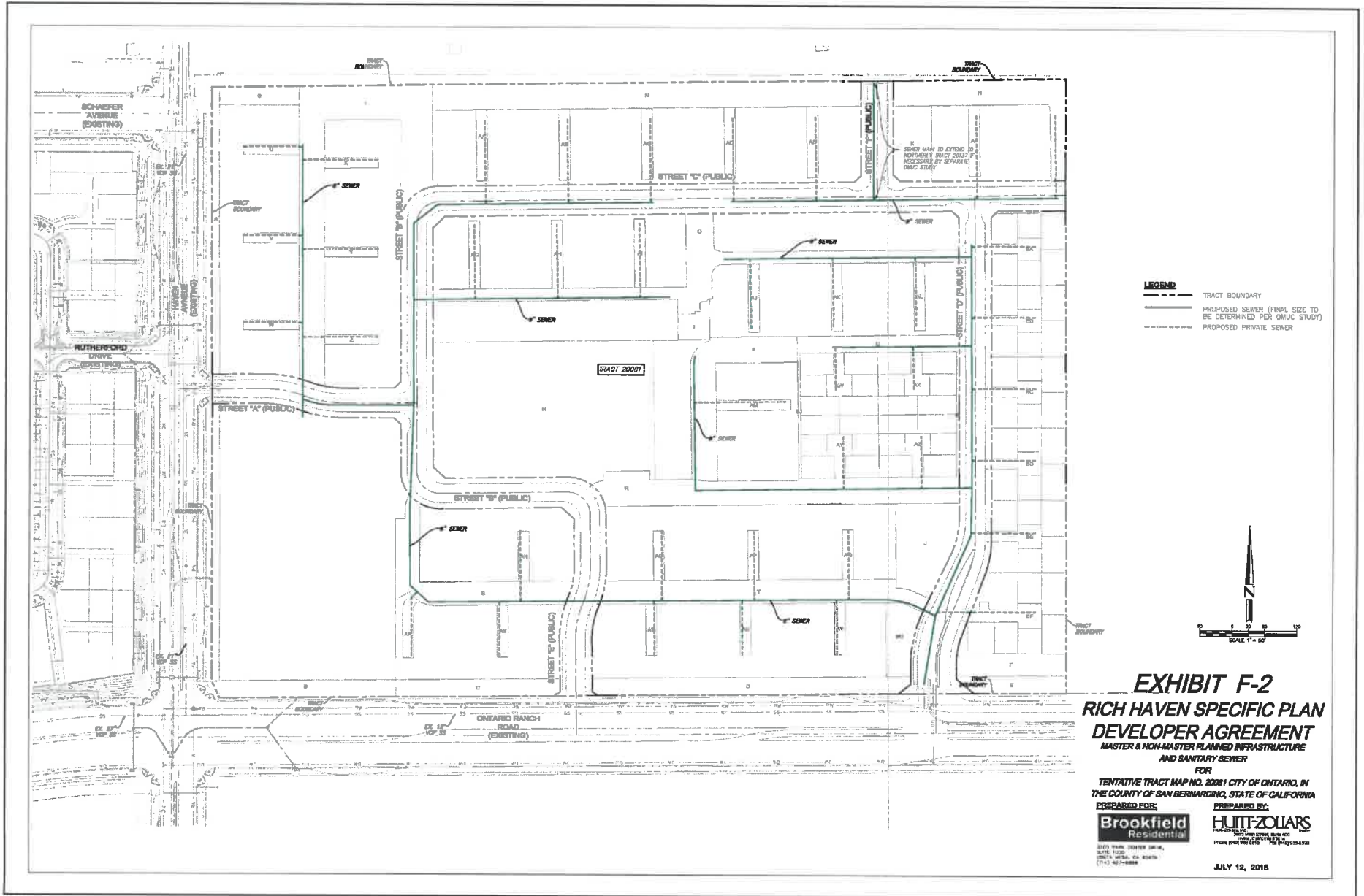
PREPARED BY:
HUNT-ZOLLARS

20081 TRACT CENTER DRIVE,
SUITE 1000
COSTA MESA, CA 92626
(714) 471-9999

20081 TRACT CENTER DRIVE,
SUITE 1000
COSTA MESA, CA 92626
Phone (949) 992-0915 Fax (949) 992-0920

JULY 12, 2018

Exhibit "F-2" Required Infrastructure Improvements



- LEGEND**
- TRACT BOUNDARY
 - PROPOSED SEWER (FINAL SIZE TO BE DETERMINED PER OMUC STUDY)
 - - - - - PROPOSED PRIVATE SEWER

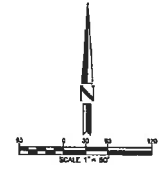


EXHIBIT F-2
RICH HAVEN SPECIFIC PLAN
DEVELOPER AGREEMENT
MASTER & NON-MASTER PLANNED INFRASTRUCTURE
AND SANITARY SEWER

FOR
TENTATIVE TRACT MAP NO. 20081 CITY OF ONTARIO, IN
THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

PREPARED FOR:
Brookfield Residential

PREPARED BY:
HUNT-ZOLIARS

2025 WALNUT STREET, SUITE 400
SUITE 1000
ONTARIO, CALIF. 91764
(714) 42-8888

1000 W. GARDEN STREET, SUITE 400
ONTARIO, CALIF. 91764
Phone (951) 954-1100 Fax (951) 954-1102

JULY 12, 2018

Exhibit "F-3" Required Infrastructure Improvements

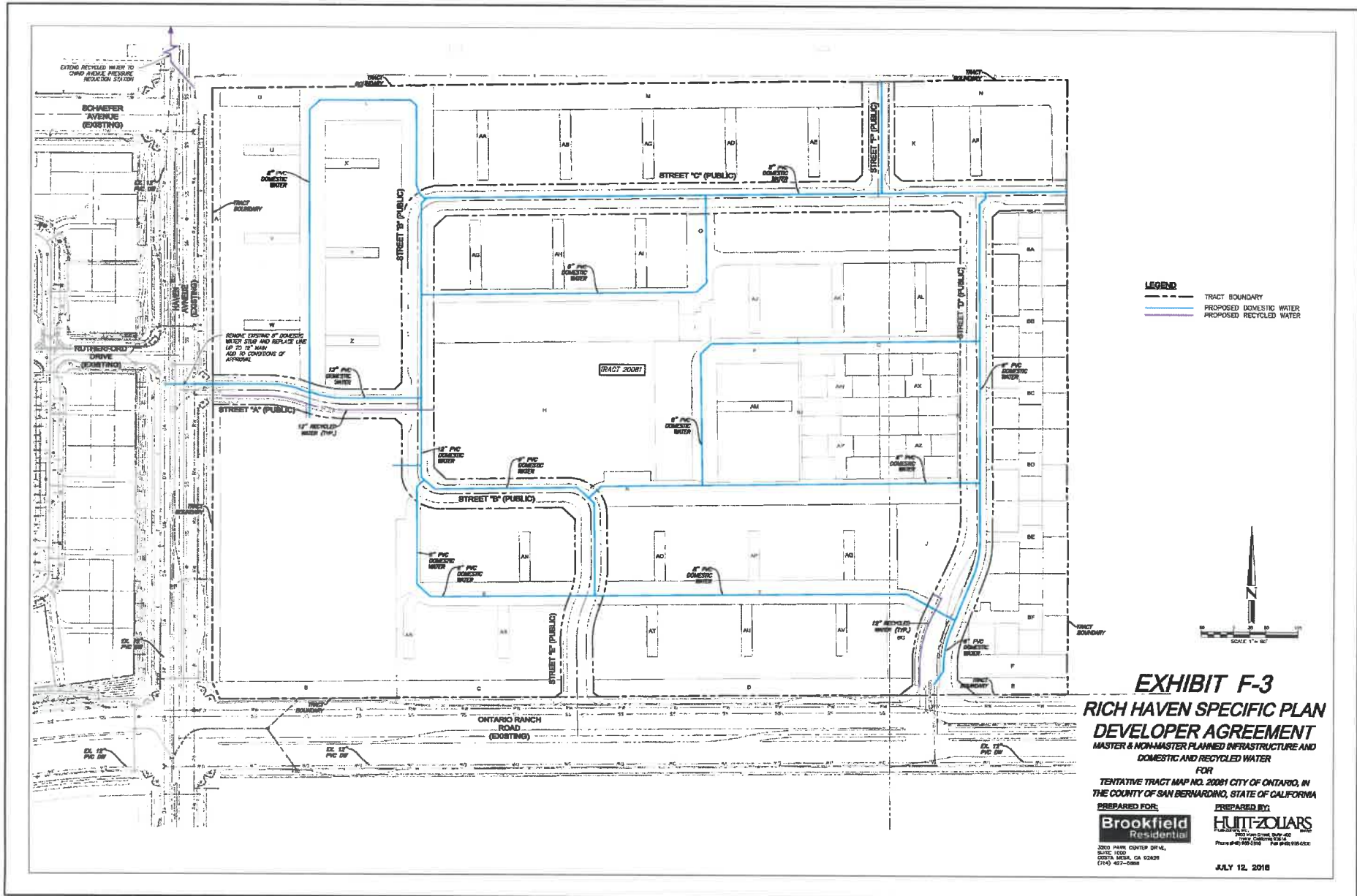


Exhibit "F-4" Required Infrastructure Improvements

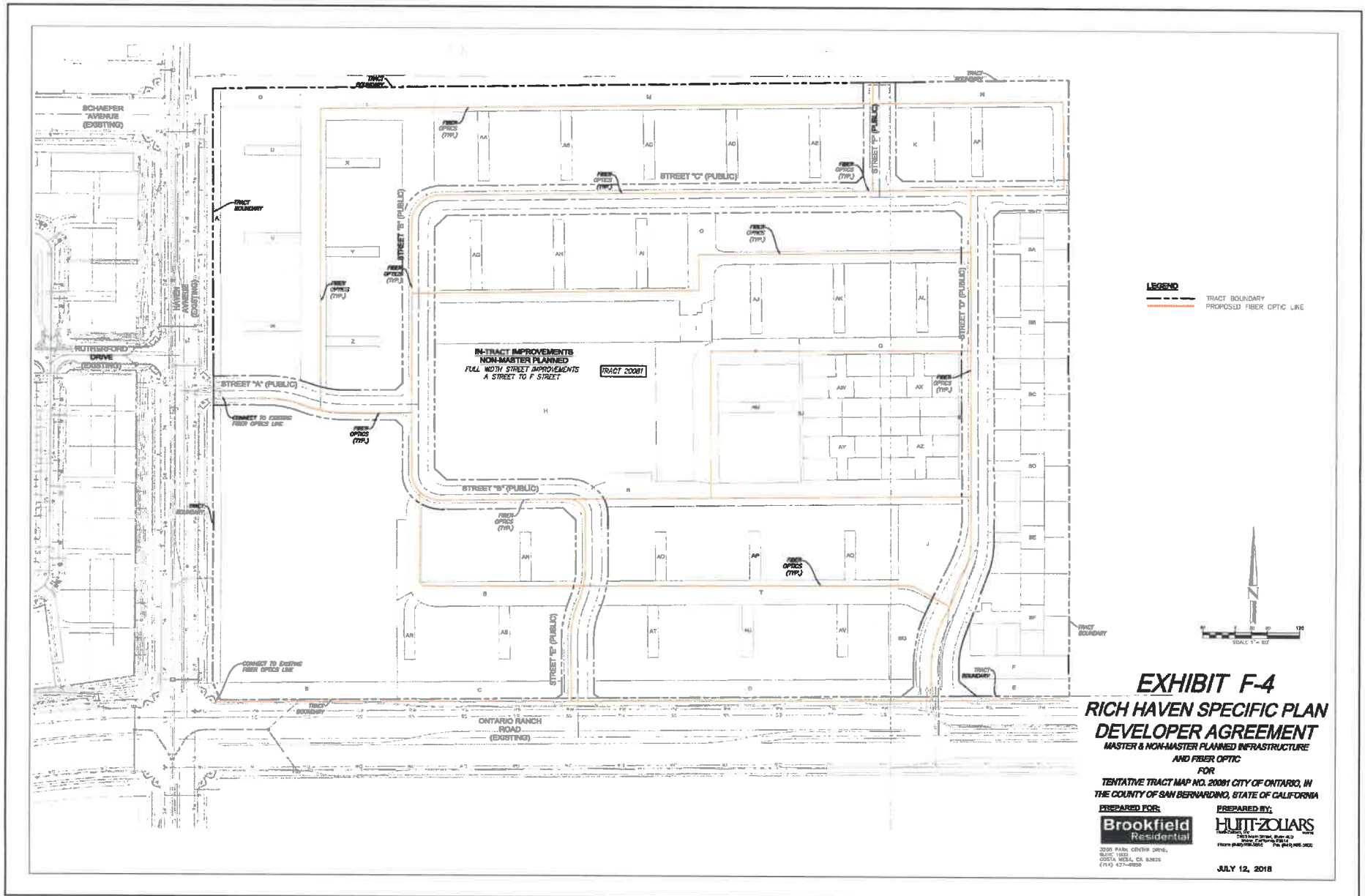


EXHIBIT F-4 RICH HAVEN SPECIFIC PLAN DEVELOPER AGREEMENT MASTER & NON-MASTER PLANNED INFRASTRUCTURE AND FIBER OPTIC

FOR
TENTATIVE TRACT MAP NO. 20081 CITY OF ONTARIO, IN
THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

PREPARED FOR:
Brookfield Residential

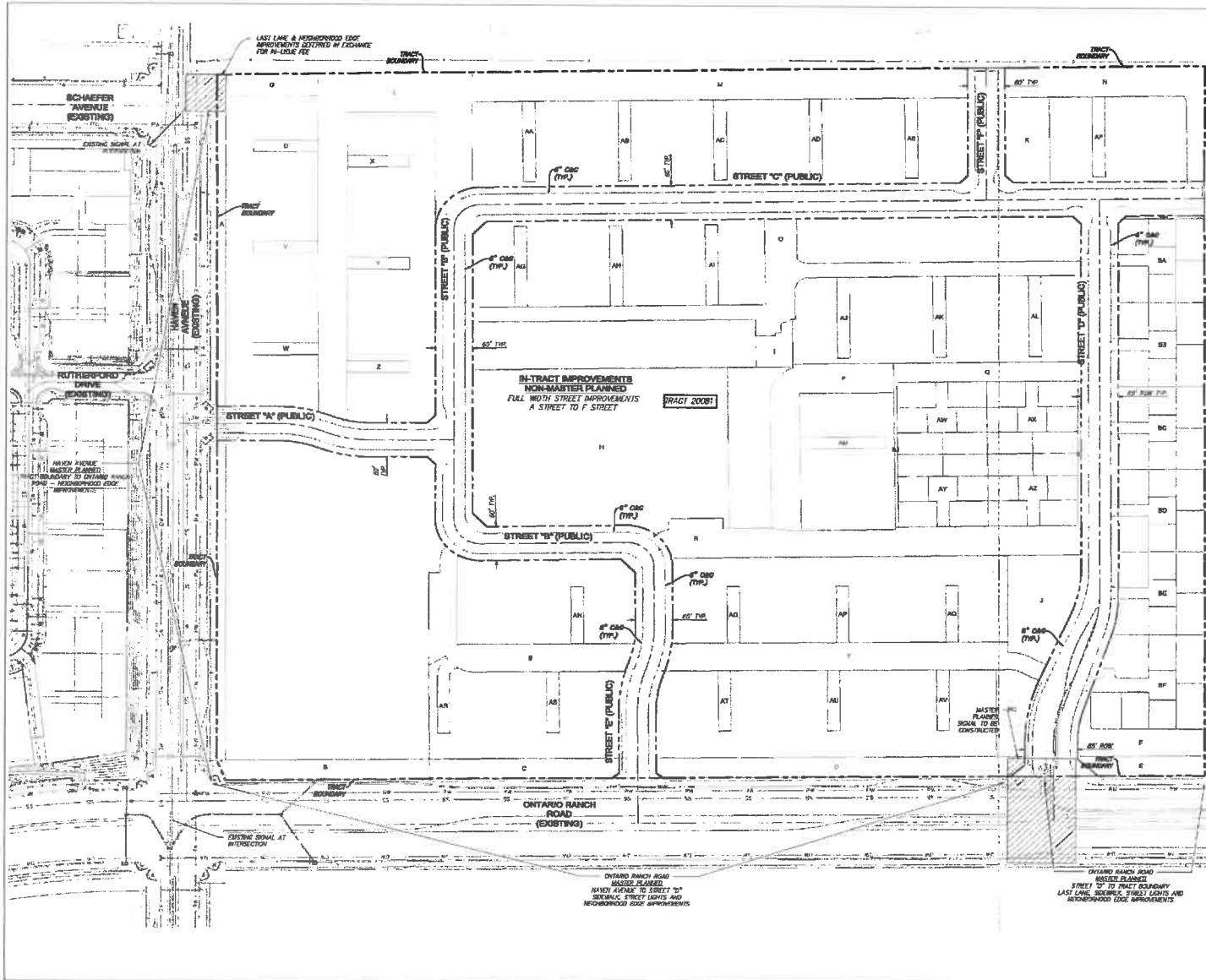
PREPARED BY:
HUITZ-ZOLLARS

2025 PARK CENTER DRIVE,
SUITE 1000
DORTA WEA, CA 92526
(714) 474-8800

2015000 Street, Suite 400
Irvine, California 92614
Phone (949) 261-5000 Fax (949) 261-5000

JULY 12, 2018

Exhibit "F-5" Required Infrastructure Improvements



- LEGEND**
- TRACT BOUNDARY
 - PUBLIC STREETS
 - PROPOSED SIGNAL IMPROVEMENTS

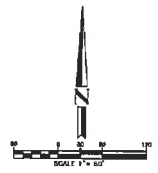


EXHIBIT F-5 RICH HAVEN SPECIFIC PLAN DEVELOPER AGREEMENT MASTER & NON-MASTER PLANNED INFRASTRUCTURE AND PUBLIC STREET

FOR
TENTATIVE TRACT MAP NO. 20081 CITY OF ONTARIO, IN
THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

PREPARED FOR:
Brookfield Residential

PREPARED BY:
HUITZOLLARS

2020 PARK CENTER DRIVE,
SUITE 1000
COSTA MESA, CA 92626
(714) 427-8888

10000 PARK CENTER DRIVE, SUITE 400
COSTA MESA, CA 92626
Phone: (949) 992-0885 Fax: (949) 992-0820

JULY 12, 2018

Exhibit "G"
Form of Plume Disclosure Letter

C I T Y O F



O N T A R I O

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

March 2017

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 *et seq.*

CITY OF ONTARIO

Agenda Report
September 4, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: PURCHASE OF WATER SYSTEM MATERIALS

RECOMMENDATION: That the City Council approve and authorize the award of Bid No. 980 to S & J Supply Company Inc. of Santa Fe Springs, California, in an estimated amount of \$250,000 and United Waterworks of Santa Ana, California, in an estimated amount of \$100,000 for the procurement of miscellaneous materials and supplies on an as-needed basis for water system repairs for Fiscal Year 2018-19.

COUNCIL GOALS: Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Sewers, Parks, Streets, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2018-19 Adopted Operating Budget includes appropriations in the amount of \$350,000 in the Water Operating Fund to cover the annual cost of parts and supplies required for water system maintenance and repairs. Actual expenses will be determined based on unit pricing and the materials required throughout the year. There is no impact to the General Fund.

BACKGROUND: The City's water distribution systems contain over 613 miles of pipeline that are currently maintained by the City. This award will provide the materials for planned maintenance and emergency repairs due to sudden and unexpected system failures. The bids establish price schedules for specific parts and supplies needed for maintenance and repairs on the water system.

In July 2018, the City solicited bids based on estimated annual quantities and requested unit pricing for specific parts and supplies. On July 21, 2018, ten (10) bids were received through the City's electronic bid management system in response to Bid No. 980.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Tom O'Neill
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 09/04/2018

Approved: _____

Continued to: _____

Denied: _____

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Companies that provided bids are as follows:

<u>Name</u>	<u>Location</u>
S & J Supply Company, Inc	Santa Fe Springs, CA
United Water Works	Santa Ana, CA
Consumers Pipe & Supply Company	Fontana, CA
Core & Main	Perris, CA
Ferguson Waterworks	Menifee, CA
Inland Water Works Supply Company	San Bernardino, CA
J. W. D'Angelo Company, Inc	La Habra, CA
TPS Plumbing Supply	Upland CA
Western Water Works Supply Company	Chino Hills, CA
Yardley-Orgill Company, Inc	Stanton, CA

Staff reviewed the bids for responsiveness and pricing criteria. Not all bidders could provide a majority of the items sought. Based on the proposed unit pricing and estimated quantities of the most commonly purchased materials, staff evaluated bid responses and recommends awarding the bid to both S & J Supply Company Inc. and United Waterworks. By awarding the bid to both suppliers, the City can obtain lower per unit pricing when buying the required materials and help ensure availability of items for urgency repairs in the City's water system.