

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
JUNE 4, 2019**

Paul S. Leon
Mayor

Ruben Valencia
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member



Scott Ochoa
City Manager

John E. Brown
City Attorney

Sheila Mautz
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

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

ORDER OF BUSINESS The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

(EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER (OPEN SESSION)

6:00 p.m.

ROLL CALL

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

CLOSED SESSION PUBLIC COMMENT The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One case.*
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Ohio Casualty Insurance Company v. City of Ontario, U.S. District Court, Case No. 5:18-cv-01117-PSG-AS*

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

PLEDGE OF ALLEGIANCE

Mayor pro Tem Valencia

INVOCATION

Pastor Steve Marquedant, Sovereign Grace Baptist Church

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

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

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

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

SPECIAL CEREMONIES

LIGHTSPEED MAKERSPACE POWERED BY ONTARIO REIGN

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 April 16, 2019, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills March 22, 2019 through April 25, 2019 and **Payroll** March 17, 2019 through April 27, 2019, when audited by the Finance Committee.

3. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18810 LOCATED NEAR THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18810 located near the northwest corner of Archibald Avenue and Chino Avenue within the Countryside Specific Plan.

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. 18810 LOCATED NEAR THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE.

4. AN AGREEMENT WITH SAN BERNARDINO COMMUNITY COLLEGE DISTRICT (CRAFTON HILLS COLLEGE) FOR EMERGENCY MEDICAL SERVICES EDUCATION THROUGH FIELD INTERNSHIP FOR THE PARAMEDIC PROGRAM

That the City Council authorize the City Manager to execute a five-year agreement (on file in the Records Management Department) with San Bernardino Community College District (Crafton Hills College) for the purpose of providing Emergency Medical Services education through field internship for the paramedic program.

5. ONE-YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (“CDBG”), HOME INVESTMENT PARTNERSHIPS (“HOME”), AND EMERGENCY SOLUTIONS GRANT (“ESG”) PROGRAMS FOR FISCAL YEAR 2019-20

That the City Council:

- (A) Approve the One-Year Action Plan for Fiscal Year 2019-20 for the Community Development Block Grant (“CDBG”), HOME Investment Partnerships (“HOME”), and Emergency Solutions Grant (“ESG”) Programs (on file in the Records Management Department);
- (B) Direct staff to prepare and transmit the final documents to U.S. Department of Housing and Urban Development (“HUD”); and
- (C) Authorize the City Manager, or his designee, to take all actions necessary or desirable to implement the One-Year Action Plan for Fiscal Year 2019-20 and Subrecipient Agreements.

6. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 40 (EMERALD PARK FACILITIES)

That the City Council consider and adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 40 (Emerald Park Facilities).

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. 40 (EMERALD PARK FACILITIES).

7. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 50 (WEST ONTARIO LOGISTICS CENTER SERVICES)

That the City Council consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 50 (West Ontario Logistics Center Services).

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. 50 (WEST ONTARIO LOGISTICS CENTER SERVICES).

8. ADOPTION OF AN ORDINANCE AMENDING CHAPTERS 3, 7 AND 8B OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE RELATING TO SEWER FEES AND INTEGRATED WASTE, SEWER AND WATER SERVICES

That the City Council consider and adopt an ordinance amending Chapters 3, 7 and 8B of Title 6 of the Ontario Municipal Code authorizing increases to the rates for sewer service charges and fees, and related to integrated waste, sewer and water services.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING INCREASES TO THE RATES FOR ITS SEWER SERVICE CHARGES, MAKING CERTAIN REVISIONS TO THE ONTARIO MUNICIPAL CODE RELATING TO INTEGRATED WASTE MANAGEMENT, SEWER CHARGES, AND WATER FEES AND CHARGES, AND TAKING OTHER ACTIONS RELATED THERETO.

9. AMENDMENT TO THE AGREEMENT FOR PROCESSING, TRANSFER AND DISPOSAL OF SOLID WASTE

That the City Council authorize the City Manager to execute an amendment to the agreement (on file with Records Management Department) with USA Waste of California, Inc., a corporation duly formed and operating under the laws of the State of Delaware, a Waste Management Company (Waste Management), for processing, transfer and disposal of solid waste subject to non-substantive changes as mutually agreed to by the parties.

10. PURCHASE OF WATER METERS AND REPAIR PARTS

That the City Council approve and authorize the sole source purchase of new water meters and repair parts for a total not to exceed amount of \$2,700,000 from Core & Main of Perris, California.

PUBLIC HEARINGS

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

11. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT AMENDMENT (THIRD AMENDMENT – FILE NO. PDA05-002) BETWEEN THE CITY OF ONTARIO AND SC ONTARIO DEVELOPMENT COMPANY, LLC, TO REMOVE APPROXIMATELY 2.43 ACRES OF LAND FROM THE DEVELOPMENT AGREEMENT AND CHANGE THE LEGAL DESCRIPTION IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010), FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 9 (MULTI-FAMILY ATTACHED) LAND USE DESIGNATION OF THE PARKSIDE SPECIFIC PLAN (APNs: 0218-231-09, 0218-231-10, 0218-231-11, 0218-231-12, 0218-231-13, 0218-231-14, 0218-231-15, 0218-231-16, 0218-231-17, 0218-231-18, 0218-231-19, 0218-231-20, 0218-231-21, 0218-231-22, 0218-231-30, 0218-231-31, 0218-231-39, 0218-221-06, 0218-221-08, 0218-221-09, AND 0218-221-10)

That the City Council introduce and waive further reading of an ordinance approving the Third Amendment (File No. PDA05-002 on file with Records Management Department) to the Development Agreement between the City of Ontario and SC Ontario Development Company, LLC, to remove approximately 2.43 acres of land from the Development Agreement and change the legal description in conjunction with the lot line adjustment (File No. LLA18-010).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA05-002, A DEVELOPMENT AGREEMENT AMENDMENT (THIRD AMENDMENT – FILE NO. PDA05-002) BETWEEN THE CITY OF ONTARIO AND SC ONTARIO DEVELOPMENT COMPANY, LLC, TO REMOVE 2.43 ACRES OF LAND FROM THE DEVELOPMENT AGREEMENT AND CHANGE THE LEGAL DESCRIPTION IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010) FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 9 (MULTI-FAMILY ATTACHED) LAND USE DESIGNATION OF THE PARKSIDE SPECIFIC PLAN (APNS: 0218-231-09, 0218-231-10, 0218-231-11, 0218-231-12, 0218-231-13, 0218-231-14, 0218-231-15, 0218-231-16, 0218-231-17, 0218-231-18, 0218-231-19, 0218-231-20, 0218-231-21, 0218-231-22, 0218-231-30, 0218-231-31, 0218-231-39, 0218-221-06, 0218-221-08, 0218-221-09, AND 0218-221-10).

12. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT AMENDMENT (FIRST AMENDMENT FILE NO. PDA17-003) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, FOR THE ACQUISITION OF 2.43 ACRES OF LAND AND CHANGE THE LEGAL DESCRIPTION FOR TENTATIVE PARCEL MAP NO. 19738 (FILE NO. PMTT17-011) IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010) FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 1 (BUSINESS PARK) LAND USE DESIGNATION OF THE WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN (APNS: 0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13, 0218-271-18, 0218-221-09)

That the City Council introduce and waive further reading of an ordinance approving the First Amendment (File No. PDA17-003 on file with Records Management Department) to the Development Agreement between the City of Ontario and Ontario Land Ventures, LLC, for the acquisition of 2.43 acres of land and change to the legal description for Tentative Parcel Map No. 19738 (PMTT17-011) in conjunction with the lot line adjustment (File No. LLA18-010).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA17-003, A DEVELOPMENT AGREEMENT AMENDMENT (FIRST AMENDMENT) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, FOR THE ACQUISITION OF 2.43 ACRES OF LAND AND CHANGE THE LEGAL DESCRIPTION FOR TENTATIVE PARCEL MAP NO. 19738 (FILE NO. PMTT17-011) IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010) FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 1 (BUSINESS PARK) LAND USE DESIGNATION OF THE WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: (0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13, 0218-271-18, 0218-221-09).

13. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA18-005) BETWEEN THE CITY OF ONTARIO AND HAVEN ONTARIO NMC 1, LLC, AND HAVEN ONTARIO NMC 2, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP NO. 20134 (FILE NO. PMTT17-013), FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAVEN AND SCHAEFER AVENUES WITHIN PLANNING AREAS 5A, 5B, 5C, 5D, AND 5E (RESIDENTIAL – SMALL LOT SFD/SCE EASEMENT) LAND USE DESIGNATIONS OF THE RICH-HAVEN SPECIFIC PLAN (APN: 0218-161-01)

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA18-005 on file with Records Management Department) between the City of Ontario and Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, LLC, to establish the terms and conditions for the development of Tentative Tract Map No. 20134 (File No. PMTT17-013).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA18-005, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND HAVEN ONTARIO NMC 1, LLC AND HAVEN ONTARIO NMC 2, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP NO. 20134 (FILE NO. PMTT17-013), FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAVEN AND SCHAEFER AVENUES WITHIN PLANNING AREA 5A, 5B, 5C, 5D, AND 5E (RESIDENTIAL -SMALL LOT SFD/SCE EASEMENT) LAND USE DESIGNATIONS OF THE RICH-HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-161-01.

14. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA19-002, REVISING PORTIONS OF THE ONTARIO DEVELOPMENT CODE CHAPTER 4 (PERMITS, ACTIONS AND DECISIONS) AS IT PERTAINS TO ADMINISTRATIVE USE PERMITS, AND CHAPTER 5 (ZONING AND LAND USE) AS IT PERTAINS TO THE ESTABLISHMENT OF ALCOHOLIC BEVERAGE MANUFACTURING AND SALES, AND LIVE ENTERTAINMENT LAND USES

That the City Council introduce and waive further reading of the ordinance approving File No. PDCA19-002, a Development Code Amendment revising portions of Ontario Development Code Chapter 4 (Permits, Actions and Decisions) as it pertains to Administrative Use Permits, and Chapter 5 (Zoning and Land Use) as it pertains to the establishment of alcoholic beverage manufacturing and sales, and live entertainment land uses.

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA19-002, A DEVELOPMENT CODE AMENDMENT REVISING PORTIONS OF THE ONTARIO DEVELOPMENT CODE CHAPTER 4 (PERMITS, ACTIONS AND DECISIONS) AS IT PERTAINS TO ADMINISTRATIVE USE PERMITS, AND CHAPTER 5 (ZONING AND LAND USE) AS IT PERTAINS TO THE ESTABLISHMENT OF ALCOHOLIC BEVERAGE MANUFACTURING AND SALES, AND LIVE ENTERTAINMENT LAND USES, AND MAKING FINDINGS IN SUPPORT THEREOF.

15. A PUBLIC HEARING TO CONSIDER RESOLUTIONS REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 51 (ONTARIO RANCH LOGISTICS CENTER SERVICES) AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES

That the City Council consider and:

- (A) Adopt a resolution establishing City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services), authorizing the levy of a special tax within the community facilities district, and establishing an appropriations limit for the community facilities district;
- (B) Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services);
- (C) Adopt a resolution declaring the results of the special election and directing the recording of the Notice of Special Tax Lien; and
- (D) Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services).

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

Written communication.
Oral presentation.
Public hearing closed.

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

16. A LEGAL SERVICES AGREEMENT FOR INTERIM CITY ATTORNEY SERVICES

That the City Council consider a Legal Services Agreement with Cole Huber LLP, of Roseville, California, to provide City Attorney services on an interim basis, and authorize the City Manager to execute said agreement.

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

APPOINTMENT TO THE PLANNING COMMISSION

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

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // (GC 54957.1)
June 4, 2019

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

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

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

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One case.*

No Reportable Action	Continue	Approved
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Disposition: _____

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

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Ohio Casualty Insurance Company v. City of Ontario, U.S. District Court, Case No. 5:18-cv-0117-PSG-AS*

No Reportable Action	Continue	Approved
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Disposition: _____

Reported by:

City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18810 LOCATED NEAR THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18810 located near the northwest corner of Archibald Avenue and Chino Avenue within the Countryside Specific Plan.

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. 18810, consisting of fifty one (51) residential lots and two (2) lettered lots on 9.29 acres, as shown on Exhibit A, has been submitted by KB Home Coastal Inc., a California corporation (Mr. Scott Hansen, Vice President of Forward Planning & Development).

Tentative Tract Map No. 18810 was approved by the Planning Commission (7 to 0) on November 18, 2013 and is consistent with the adopted Countryside Specific Plan.

Improvements will include AC pavement, road widening, curb & gutter, sidewalk, access ramps, parkway landscaping with irrigation, undergrounding of overhead utilities, street lights, fire hydrants, water, sewer and storm drain mains. The improvements in the parkway landscaping will be consistent with current City approved drought measures.

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

Prepared by: Naiim Khoury
Department: Engineering
City Manager Approval: 

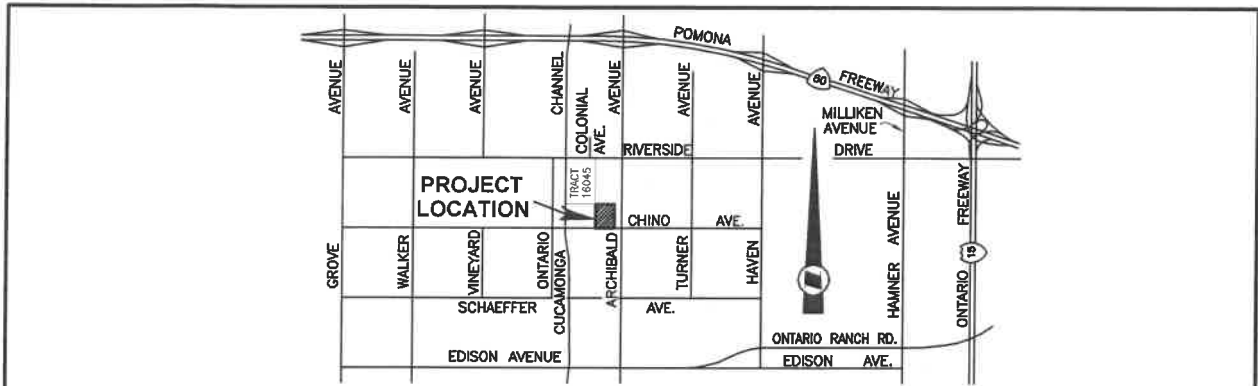
Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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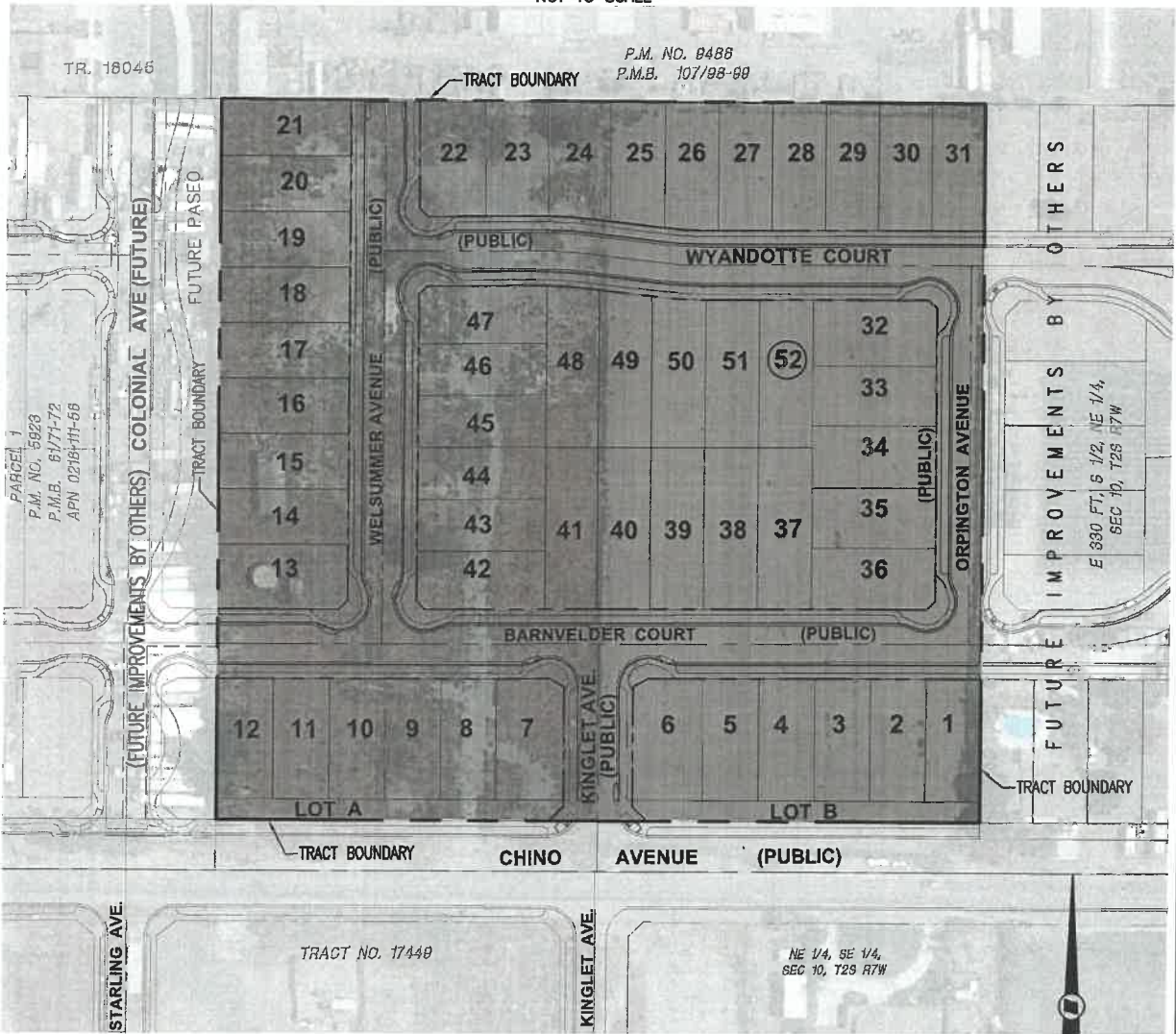
The developer has entered into an improvement agreement with the City for Final Tract Map No. 18810 and has posted adequate security to ensure construction of the required improvements.

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

EXHIBIT A TRACT MAP NO. 18810



VICINITY MAP
NOT TO SCALE



Project: Apr 13, 2010 - 11:28am by: C:\Users\... Drawing Name: 20100201_000000_00_000000.dwg (Project) 18810 TM Exhibit A.dwg

SCALE: 1"=100'

PREPARED BY:

PROACTIVE

ENGINEERING CONSULTANTS
WWW.PROACTIVEENGINEERING.NET
 200 South Main Street, Corona, CA 92682 Suite 300
 951-286-3300

**CITY OF ONTARIO
ENGINEERING DEPARTMENT**

FILE NO. TM-18810

APPLICANT / OWNER

KB HOME CALIFORNIA, LLC
 36310 INLAND VALLEY DRIVE
 WILDOMAR, CA 92595
 ATTN: HEIDI McBROOM
 (951) 691-5394

**EXHIBIT A
TRACT MAP NO. 18810**

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. 18810 LOCATED NEAR THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE.

WHEREAS, Tentative Tract Map No. 18810, submitted for approval by Richland Communities Inc., a Florida Corporation (Mr. Craig Cristina, Senior Vice President) ("Subdivider"), was approved by the Planning Commission of the City of Ontario on November 18, 2013; and

WHEREAS, Tentative Tract Map No. 18810 consists of fifty one (51) residential lots and two (2) lettered lots within the Countryside Specific Plan, being a subdivision of Parcels 2 and 3 of Parcel Map No. 5923 recorded in book 61, pages 71-72 of Parcel Maps, in the Office of the Recorder of San Bernardino County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Tract Map No. 18810, KB Home Coastal Inc. of Wildomar, California, a California corporation (Scott Hansen, Vice President of Forward Planning & Development) ("Builder") 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 builder has prepared Covenants, Conditions and Restrictions (CC&R's), 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 follows:

1. That said Improvement Agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said Improvement Security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Tract Map No. 18810, 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 June 2019.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 4, 2019 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. 2019- duly passed and adopted by the Ontario City Council at their regular meeting held June 4, 2019.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: AN AGREEMENT WITH SAN BERNARDINO COMMUNITY COLLEGE DISTRICT (CRAFTON HILLS COLLEGE) FOR EMERGENCY MEDICAL SERVICES EDUCATION THROUGH FIELD INTERNSHIP FOR THE PARAMEDIC PROGRAM

RECOMMENDATION: That the City Council authorize the City Manager to execute a five-year agreement (on file in the Records Management Department) with San Bernardino Community College District (Crafton Hills College) for the purpose of providing Emergency Medical Services education through field internship for the paramedic program.

COUNCIL GOALS: Maintain the Current High Level of Public Safety

FISCAL IMPACT: The recommended agreement provides for the continuation of the existing paramedic field internship program between the City and San Bernardino Community College District (Crafton Hills College) for an additional five year period at no cost to the City. The cost for staffing of interns, uniforms, and any ancillary items is to be borne by the college in return for the City providing field training for the paramedic program.

BACKGROUND: The training of new emergency medical services personnel, including paramedics, involves the joint cooperation between authorized training institutions, hospitals, and public safety emergency medical services providers. All prospective paramedic students must first complete a classroom didactic portion at a training institution, then a clinical hospital internship, and end with the successful field internship with an actual emergency medical services provider. Each of these segments is a two-month period. In order to ensure that a current cadre of trained professional paramedics is available to meet demand, agencies like the City of Ontario participate in this process.

STAFF MEMBER PRESENTING: Ray Gayk, Fire Chief

Prepared by: Art Andres
Department: Fire

City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: ONE-YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (“CDBG”), HOME INVESTMENT PARTNERSHIPS (“HOME”), AND EMERGENCY SOLUTIONS GRANT (“ESG”) PROGRAMS FOR FISCAL YEAR 2019-20

RECOMMENDATION: That the City Council:

- (A) Approve the One-Year Action Plan for Fiscal Year 2019-20 for the Community Development Block Grant (“CDBG”), HOME Investment Partnerships (“HOME”), and Emergency Solutions Grant (“ESG”) Programs (on file in the Records Management Department);
- (B) Direct staff to prepare and transmit the final documents to U.S. Department of Housing and Urban Development (“HUD”); and
- (C) Authorize the City Manager, or his designee, to take all actions necessary or desirable to implement the One-Year Action Plan for Fiscal Year 2019-20 and Subrecipient Agreements.

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

FISCAL IMPACT: In the next fiscal year, the City will receive \$1,824,218 in CDBG funds and \$863,012 in prior year unallocated CDBG funds, \$659,631 in HOME funds, and \$156,918 in ESG funds from HUD.

BACKGROUND: HUD requires that cities prepare and adopt an annual Action Plan for each year of the Five-Year Consolidated Plan which provides for the expenditure of CDBG, HOME, and ESG funds.

STAFF MEMBER PRESENTING: Julie Bjork, Executive Director Housing and Neighborhood Preservation

Prepared by: Katryna Gonzalez
Department: Housing & Neighborhood Preservation

City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019

Approved: _____

Continued to: _____

Denied: _____

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The Fiscal Year 2019-20 One-Year Action Plan is the fifth and final plan prepared as part of the 2015-19 Five-Year Consolidated Plan.

Two community forums/public meetings were held on January 24, 2019 and March 28, 2019 to solicit public participation in the development of the One-Year Action Plan. On March 29, 2019, the City advertised the availability of the draft Action Plan for public review. The draft One-Year Action Plan was available for public review from March 29, 2019 through May 6, 2019.

The City’s CDBG, HOME, and ESG allocations from HUD for Fiscal Year 2019-20 as compared to last year’s allocations are illustrated below:

	Fiscal Year 2018-19	Fiscal Year 2019-20	Difference
CDBG	\$1,849,306	\$1,824,218	(\$25,088)
Available CDBG Contingency (Roll over from Prior Years)	\$790,550	\$863,012	\$72,462
HOME	\$709,939	\$659,631	(\$50,308)
ESG	\$156,098	\$156,918	\$820
TOTAL	\$3,505,893	\$3,503,779	(\$2,114)

The One-Year Action Plan allocates funds to programs designed to support strategies identified in the Consolidated Plan. The detailed Fiscal Year 2019-20 proposed funding allocations are provided in Exhibit A. The City solicits applications from outside entities every two years. Applications from external agencies were received for funding during Fiscal Year 2019-20.

Subsequent to City Council approval and the release of the actual allocations from HUD, the Fiscal Year 2019-20 One-Year Action Plan will be submitted to HUD prior to the required deadline of June 14, 2019.

EXHIBIT A

FISCAL YEAR 2019-20 FUNDING ALLOCATION SUMMARY

RECOMMENDED CDBG FUNDING

<u>Proposed Programs</u>	<u>Implementing Agency</u>	<u>Amount</u>
Administration	City of Ontario Housing & Neighborhood Preservation	\$ 332,643
Fair Housing	Inland Fair Housing and Mediation Board	\$ 22,000
Housing Mediation	Inland Fair Housing and Mediation Board	\$ 10,200
Senior Services	Inland Fair Housing and Mediation Board	\$ 10,000
Mercy House Continuum of Care	Mercy House	\$ 37,914
Family Stabilization at Sova Program Center	Inland Valley Hope Partners	\$ 18,410
Community Improvement Team (CIT)	City of Ontario Community Improvement	\$ 100,000
Weatherization Home Improvement Program	City of Ontario Housing & Neighborhood Preservation	\$ 400,000
Ontario Access Center Improvements	City of Ontario Housing & Neighborhood Preservation	\$ 38,062
Community Block Wall along Mountain Avenue	City of Ontario Housing & Neighborhood Preservation	\$ 200,000
LED Street Light Conversion Project	City of Ontario Engineering	\$ 100,000
Alley Pavement Rehabilitation	City of Ontario Engineering	\$ 235,000
Rubber-Polymer Modified Slurry Seal (RPMSS) Project	City of Ontario Engineering	\$ 300,000
Wheelchair Ramp Installation	City of Ontario Community & Public Services	\$ 158,693
Park Improvements Project	City of Ontario Community & Public Services	\$ 392,000
Neighborhood Preservation Program	City of Ontario Housing & Neighborhood Preservation	\$ 185,308
Child Care Subsidies	Ontario-Montclair YMCA	\$ 22,000
Downtown Storefront Façade Improvement	City of Ontario Economic Development	\$ 125,000
	TOTAL	\$ 2,687,230

RECOMMENDED HOME FUNDING

<u>Proposed Programs</u>	<u>Implementing Agency</u>	<u>Amount</u>
Tenant Based Rental Assistance Program	City of Ontario Housing & Neighborhood Preservation	\$ 247,361
Single-Family/Multi-Family Housing Rehabilitation and New Construction	City of Ontario Housing & Neighborhood Preservation	\$ 247,362
Community Housing Development Organizations (CHDOs) Housing Program	CHDOs	\$ 98,945
Administration	City of Ontario Housing & Neighborhood Preservation	\$ 65,963
	TOTAL	\$ 659,631

RECOMMENDED ESG FUNDING

<u>Proposed Programs</u>	<u>Implementing Agency</u>	<u>Amount</u>
Administration	City of Ontario Housing & Neighborhood Preservation	\$ 5,504
Administration	Mercy House	\$ 6,264
Services for Battered Women and Children	House of Ruth	\$ 12,600
Mercy House Continuum of Care	Mercy House	\$ 132,550
	TOTAL	\$ 156,918

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 40 (EMERALD PARK FACILITIES)

RECOMMENDATION: That the City Council consider and adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 40 (Emerald Park Facilities).

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 Emerald Park project is estimated to generate approximately \$6.2 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 May 7, 2019, the City Council adopted the resolution of formation for Community Facilities District No. 40 (Emerald Park Facilities) 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. 40 (Emerald Park Facilities).

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: Armen Harkalyan, Executive Director of Finance

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

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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to establish a community facilities district and levy special taxes, and to issue bonds. On April 2, 2019, the City Council approved Resolution No. 2019-029, a Resolution of Intention to establish City of Ontario Community Facilities District No. 40 (Emerald Park Facilities) and authorize the levy of special taxes; and adopted Resolution No. 2019-030, 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 May 7, 2019 to consider formation matters. On May 7, 2019, the City Council conducted a public hearing on the formation of the District, adopted the resolution of formation, and introduced and waived further reading of the ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 40 (Emerald Park Facilities).

Included, as part of the resolutions of intention and formation, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 40 (Emerald Park Facilities). The terms of the rate and method of apportionment of special tax are consistent with the City Council's adopted Mello-Roos local goals and policies in all respects, and City staff have discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner.

The Emerald Park project addresses the development of approximately 24 gross acres located generally east of Archibald Avenue, south of La Avenida Drive, and north of Ontario Ranch Road. At build out, the development is projected to include 265 units, comprised of 48 detached and 217 attached units. The Community Facilities District is being formed pursuant to the provisions of the BrookCal Ontario, 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. 40 (EMERALD PARK FACILITIES).

WHEREAS, on April 2, 2019, 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. 40 (Emerald Park Facilities), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 40 (Emerald Park Facilities) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on May 7, 2019, 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. 40 (Emerald Park Facilities), 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. 40 (Emerald Park Facilities)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 40 (Emerald Park Facilities)", 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 May 7, 2019, 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 2019-20 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 June 2019.

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. 3131 was duly introduced at a regular meeting of the City Council of the City of Ontario held May 7, 2019 and adopted at the regular meeting held June 4, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3131 duly passed and adopted by the Ontario City Council at their regular meeting held June 4, 2019 and that Summaries of the Ordinance were published on May 14, 2019 and June 11, 2019, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

June 4, 2019

SECTION: CONSENT CALENDAR

SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 50 (WEST ONTARIO LOGISTICS CENTER SERVICES)

RECOMMENDATION: That the City Council consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 50 (West Ontario Logistics Center Services).

COUNCIL GOALS: Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

FISCAL IMPACT: The use of Mello-Roos financing for services in the industrial development of the West Ontario Logistics Center Services project is estimated to generate approximately \$371,500 per year, at build out, to fund City services. The use of Mello-Roos financing for West Ontario Logistics Center Services will not generate funds for facilities, at this time, and bonds will not be issued as part of this formation.

BACKGROUND: The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts (CFDs) for the purpose of levying special taxes to finance various kinds of government services. On April 2, 2019, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 50 (West Ontario Logistics Center Services) with the adoption of Resolution No. 2019-031, declaring the City's intention to establish the district and to authorize the levying of special taxes in the district. On May 7, 2019, the City Council conducted a public hearing on the formation of the District, adopted the resolution of formation, and introduced and waived further reading of the ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 50 (West Ontario Logistics Center Services). Adoption of the

STAFF MEMBER PRESENTING: Armen Harkalyan, Executive Director of Finance

Prepared by: Bob Chandler
Department: Management Services

City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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ordinance will conclude the formation process for the District. The West Ontario Logistics Center project addresses the development of approximately 55 gross acres located south of Merrill Avenue, east of Carpenter Avenue, and west of Cucamonga Channel. At build-out, the project is projected to include 1,197,820 square feet of industrial development.

Included, as part of the resolutions of intention and formation, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 50 (West Ontario Logistics Center Services). The terms of the rate and method of apportionment of special tax are consistent with the City Council's adopted Mello-Roos local goals and policies in all respects, and City staff have discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner.

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. 50 (WEST ONTARIO LOGISTICS CENTER SERVICES).

WHEREAS, on April 2, 2019, 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. 50 (West Ontario Logistics Center Services) and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 50 (West Ontario Logistics Center Services) (the "Community Facilities District") and to finance certain services (the "Services"); and

WHEREAS, on May 7, 2019, 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. 50 (West Ontario Logistics Center Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation") and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 50 (West Ontario Logistics Center Services)," which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on May 7, 2019, 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 2019-20 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 4th day of June 2019.

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. 3132 was duly introduced at a regular meeting of the City Council of the City of Ontario held May 7, 2019 and adopted at the regular meeting held June 4, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3132 duly passed and adopted by the Ontario City Council at their regular meeting held June 4, 2019 and that Summaries of the Ordinance were published on May 14, 2019 and June 11, 2019, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: ADOPTION OF AN ORDINANCE AMENDING CHAPTERS 3, 7 AND 8B OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE RELATING TO SEWER FEES AND INTEGRATED WASTE, SEWER AND WATER SERVICES

RECOMMENDATION: That the City Council consider and adopt an ordinance amending Chapters 3, 7 and 8B of Title 6 of the Ontario Municipal Code authorizing increases to the rates for sewer service charges and fees, and related to integrated waste, sewer and water services.

COUNCIL GOALS: Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: A component of the City's sewer service fees and charges includes a pass through of the costs imposed upon the City by the Inland Empire Utilities Agency (IEUA) for treatment of sewage. IEUA has previously approved charges for treatment of sewage necessary to provide adequate revenues to meet their operational needs through FY 2019-20, and in order to continue passing through the IEUA increased costs it is necessary for the City to adopt the proposed adjustments. The current average residential combined utility bill (integrated waste, sewer and water) is about \$128.60 per month. The recommended pass through will result in an average monthly increase of \$1.61, or 1.25%.

BACKGROUND: On May 7, 2019, the City Council held a public hearing to consider all written protests against the proposed increase to sewer fees in accordance with California Constitution, Article XIII D, Section 6(a). At the conclusion of the hearing, it was determined that the two written protests out of the 43,786 parcels did not constitute a majority protest. The public hearing was closed and the City Council introduced an ordinance amending Chapters 3, 7 and 8B of Title 6 of the Ontario Municipal Code.

Pursuant to Proposition 218 (California Constitution, Article XIII D, Section 6), the City is required to comply with the following procedures prior to increasing sewer services fees and charges:

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Michael Sigsbee
Department: MU/Integrated Waste Department

City Manager
Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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Proposition 218 Procedure

1. Parcels upon which the increased fee or charge is proposed to be imposed have been identified, and Proposition 218 Notice (“Notice”) was mailed on March 22, 2019 to (a) the record owner (as defined in California Government Code Section 53750(j) (the “Owner”) of each identified parcel (as defined in California Government Code Section 53750(g); and (b) any customer of record who, at the time the notice is mailed, has a billing account with the City and is directly liable to pay the fee (“Customer”) for an identified parcel.
2. The Notice contained (a) the amount of the fee or charge; (b) the basis on which it was calculated; (c) the reason for the increase; and (d) the date, time, and location the City Council will conduct a public hearing on the proposed increase.
3. A public hearing was scheduled for May 7, 2019 (at least 45 days after the Notice was mailed) to consider all written protests against the proposed increase to the fee or charge. If at the conclusion of the hearing written protests against the proposed increased fee are presented by a majority of Owners/Customers of parcels to be charged, the City may not increase the fee.

Resolution 2007-097 (adopted on August 21, 2007) established the following procedures for considering protests against proposed rate increases in accordance with California Constitution, Article XIII D, Section 6(a):

1. Each Owner or Customer may submit one written protest per parcel. Each protest must be submitted to the City Clerk at 303 East “B” Street, Ontario, California 91764, or in person at the public hearing.
2. All protests must be received by the City Clerk by the close of the public hearing. Any protest received after the close of the public hearing, even if postmarked prior to that time, will not be accepted or counted.
3. Each protest must be in writing and provide the location of the identified parcel (by assessor’s parcel number or street address) and include the signature of the Owner or Customer. Protests submitted by e-mail will not be accepted. Although oral comments or testimony at the public hearing will not qualify as a formal written protest, the City Council welcomes input from the public during the public hearing on the proposed fee.
4. To be valid, a protest must (a) state that it is in opposition to the proposed fee; and (b) contain the original signature of an Owner or Customer of the identified parcel. Any protest that does not contain this information or an original signature of either an Owner or Customer shall not be tabulated.
5. Any Owner or Customer who submits a protest may withdraw it by submitting a written request to withdraw the protest. The request must be submitted to the City Clerk prior to the close of the public hearing either at 303 East “B” Street, Ontario, California 91764, or in person at the public hearing. The withdrawal of a protest must include the location of the identified parcel (by assessor’s parcel or street address) and include the original signature of the Owner or Customer

who submitted the protest. Only the Owner or Customer who submitted the protest may withdraw it. A request to withdraw a protest submitted by e-mail will not be accepted.

6. If an identified parcel is owned by more than a single Owner or more than one name appears on the City's records as the Customer for the identified parcel, or if the Customer is not the Owner, each Owner or Customer may submit a protest; provided, however, only one protest will be counted per identified parcel. Any one protest submitted in accordance with these procedures shall be sufficient to count as a protest for that identified parcel.
7. The City Clerk shall determine the validity of all protests. The City Clerk shall not accept as valid any protest if the City Clerk determines that any of the following conditions exist:
 - a. The protest is not in writing.
 - b. The protest does not provide the location of the identified parcel by either assessor's parcel number or street address.
 - c. The protest does not contain an original signature of an Owner or Customer of the property identified on the protest.
 - d. The protest does not state its opposition to the proposed fee which is the subject of the protest proceeding.
 - e. The protest is not received by the City Clerk prior to the close of the public hearing on the proposed fee.
 - f. A valid request to withdraw the protest is received prior to the close of the public hearing on the proposed fee.
8. The City Clerk's decision regarding the validity of a protest or a request for the withdrawal of a protest shall constitute a final action of the City and shall not be subject to any internal appeal.
9. The City Clerk may begin to tabulate protests at any time after the close of the public hearing on the proposed fee. In the event the City Clerk cannot complete the tabulation of the protests before the conclusion of the City Council meeting, the City Council may continue the action to impose or not impose the fee to another City Council meeting date. The continuation of the action on the item to another meeting does not reopen the public hearing on the proposed fee.
10. A majority protest exists if valid written protests are timely submitted and not withdrawn by the Owners of or Customers with respect to, a majority of the identified parcels.

Proposed IEUA Pass Through Rate Adjustment & Ordinance Changes

The proposed rate increase for the IEUA pass through adjustment as well as other changes to reflect current operating practices and legislative mandates are set forth in the attached ordinance amending Chapters 3, 7 and 8B of Title 6, of the Ontario Municipal Code relating to sewer fees and integrated waste, sewer and water services.

Utility services for integrated waste, sewer and water are operated as separate Enterprise Funds and are not commingled with the City's General Fund. These utility services are funded by the fees and charges (rates) to the customers and the budgets are approved annually. Rates and services are reviewed periodically to ensure that the established service rates are:

- a. Adequate to recover costs reasonably borne in providing the services;
- b. Equitable to all customer classes;
- c. In compliance with all State and Federal regulations; and
- d. Easily explained to customers.

The City contracts with IEUA for sewer treatment at regional sewer treatment facilities owned and operated by IEUA. The IEUA Board of Directors sets the treatment rate per EDU (equivalent dwelling unit = one single-family residence) which is charged to the City and passed through on the City utility bills. The basis and reasons for the proposed increase is to enable the City to recover the pass through costs imposed upon the City by IEUA for treatment of sewage. The proposed adjustment will authorize the City to (1) increase the IEUA component of sewer service fees to reflect the actual costs from IEUA, and (2) continue passing through cost increases from IEUA for a four year period, commencing July 1, 2020. The monthly IEUA pass through rate for sewer treatment is recommended to increase by \$1.61 per EDU from the current \$18.39 per EDU to \$20.00 per EDU effective on bills sent on or after July 1, 2019.

If approved by the City Council, the City may annually implement any IEUA pass through adjustments for a four-year period commencing July 1, 2020, through and including July 1, 2023. Provided, however, that: (1) any increase in the IEUA pass through adjustment shall not exceed 10% per year; and (2) in no event shall such rates be increased as a result of an IEUA pass through adjustment by more than the cost of providing sewer treatment service. Any IEUA pass through adjustment will only impact the rates for the IEUA charge as established above. Prior to implementing any increase in the sewer service charges as a result of any IEUA pass through adjustment, the City will provide written notice of the rate increase not less than 30 days prior to its effective date.

Additionally, the ordinance includes changes to Chapter 3, 6 and 7B of Title 6 to adopt future rates by resolution similar to the annual budget adoption process to help streamline the fee adoption process. Currently, the Municipal Code requires changes to utility rates and charges to be made by ordinance which requires a second reading at a separate meeting and become effective 30 days after adoption. Adopting by resolution will allow for proposed rates and charges to be adopted at the conclusion of the public hearing and may become effective immediately.

As a result of the passage of the California Global Warming Solutions Act (AB 32) and the subsequent related legislation and regulations that have followed it, and the recent name change from Solid Waste to Integrated Waste, various elements of Chapter 3 of Title 6 of the Ontario Municipal Code require revision and updating. The City and our customers are responding to new and evolving legislative mandates related to expanded diversion and recycling requirements that is intended to help reduce greenhouse gas emissions, such as commercial and industrial recycling, food waste recycling, and tire, mattress, and electronic waste handling and recycling. Additionally, references throughout the Code have been updated to reflect the recent name change for Integrated Waste Operations.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING INCREASES TO THE RATES FOR ITS SEWER SERVICE CHARGES, MAKING CERTAIN REVISIONS TO THE ONTARIO MUNICIPAL CODE RELATING TO INTEGRATED WASTE MANAGEMENT, SEWER CHARGES, AND WATER FEES AND CHARGES, AND TAKING OTHER ACTIONS RELATED THERETO.

WHEREAS, the City provides sewer service to properties within its service area, and is authorized to charge sewer service charges to pay for the costs of such service; and

WHEREAS, the City collects wastewater within its service area, and pays the Inland Empire Utilities Agency ("IEUA") to treat wastewater discharged and collected within the City; and

WHEREAS, the rate structure for sewer service charges is comprised of two components: (i) a charge for capital replacement, operations and maintenance, billing, customer service, and other related costs ("City Charge"); and (ii) a treatment charge for costs imposed on the City by the Inland Empire Utilities Agency ("IEUA Charge") that is passed through by the City to its sewer customers; and

WHEREAS, the rate structure for the City Charge is determined based on customer class, with residential customers paying an amount per unit, and non-residential paying an amount per EDU, plus an additional unit charge depending on the type of non-residential customer at issue; and

WHEREAS, customer classes are determined based on shared characteristics of the wastewater discharged to the City's wastewater system, including strength and flow of such wastewater; and

WHEREAS, in 2016, after conducting a rate study to analyze the City's sewer service revenue requirements, the City previously determined to increase its rates for sewer service in order to cover: (i) current and projected operations and maintenance costs of the City's sewer system (the "System"); and (ii) the capital infrastructure improvements needed to repair, replace, and update the System; and

WHEREAS, the prior rates adopted by the City included a schedule of increases, and authorized the City to pass through increased rates imposed on the City by IEUA for the IEUA Charge through and including July 1, 2017; and

WHEREAS, since 2017, the rates imposed by IEUA for the IEUA Charge have increased, and the City has determined that it is necessary to increase the IEUA Charge to reflect such increased rates from IEUA, effective July 5, 2019; and

WHEREAS, the City Charge, which was previously established based on a rate study prepared for such purpose, does not need to be increased at this time; and

WHEREAS, in order to capture future wholesale wastewater rate increases imposed by IEUA, the City has further determined to authorize a four-year schedule of rate increases to the IEUA Charge for the cost of any future rate increases adopted by the IEUA Board of Directors and imposed on the City for the treatment of sewer discharged and collected within the City, commencing July 1, 2020 through and including July 1, 2023, (each such rate increase by the IEUA is referred to herein as an "IEUA Pass Through") provided, however, that (1) any increase in the IEUA Charge as a result of an IEUA Pass Through shall not exceed 10% per year; (2) in no event shall such rates be increased as a result of an IEUA Pass Through by more than the cost of providing sewer service; and

WHEREAS, the schedule of proposed rates for the sewer service charges is attached hereto as Exhibit "A" and by this reference incorporated herein and by this reference made an operative part hereof; and

WHEREAS, in addition, the City wishes to make certain changes to its Municipal Code to reflect the rates adopted herein, all as set forth in Exhibit "B" hereto; and

WHEREAS, the rates imposed by IEUA, which are passed through to customers through the IEUA Charge, are set from time to time by IEUA, and the 2016 rate study supporting the City Charge (which is not increasing above previously authorized levels) is available for inspection at the offices of the City Clerk; and

WHEREAS, the City Council hereby finds and determines the following with regard to the proposed rate increases to the sewer service charges:

1. The revenues derived from the proposed sewer service charges will not exceed the funds required to provide the sewer services and shall be used exclusively for the wastewater system;
2. The amount of the proposed sewer service charges will not exceed the proportional cost of the service attributable to each parcel upon which they are proposed for imposition;
3. The proposed sewer service charges will not be imposed on a parcel unless the sewer services are actually used by, or immediately available to, the parcel;
4. The proposed sewer service charges will not be used for any other purpose than that for which they are imposed;
5. The proposed sewer service charges are not levied for general governmental services;
6. The proposed sewer service charges represent increases in the charges needed to operate sewer collection and treatment facilities; and

WHEREAS, the City hereby finds and determines that in accordance with the provisions of California Constitution article XIII D, section 6 ("Article XIII D"):

1. The City identified the parcels upon which the sewer service charges are proposed to be imposed, and calculated the amount of the charges proposed to be imposed;

2. On March 22, 2019, the City mailed written Notice to the record owners of the parcels upon which the sewer service charges are proposed to be imposed and any tenants directly liable for the payment of sewer service charges ("customers") which explained: (a) the amount of the charges; (b) the basis on which they were calculated; (c) the reason for the increases; and (d) the date, time, and location of the public hearing on the proposed increases; and

3. On May 7, 2019 (more than 45 days after mailing the Notice), the City conducted a public hearing and considered all written protests against the proposed increases to the sewer service charges.; and

4. At the conclusion of the public hearing, written protests against the proposed increases to the sewer service charges were not presented by a majority of customers subject to the proposed charges; and

WHEREAS, in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines, the City Staff has determined that the amendments to the Municipal Code, and the increases in sewer service charges are exempt from CEQA pursuant to Section 15378 and Section 15273 of the CEQA Guidelines because: (a) the increased charges are for the purpose of meeting operational and maintenance expenses of the aforementioned services; and (b) the charges constitute the creation of a funding mechanism/other governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.; and

WHEREAS, the City Council now wishes to adopt the increased rates for the sewer service fees set forth in Exhibit "A" hereto, and to further adopt certain amendments to the City's Municipal Code to allow for future rates for water and sewer to be adopted by resolution, and to make additional changes relating to integrated waste management;

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

SECTION 1. The City Council hereby finds and determines that the recitals discussed above are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

SECTION 2. Commencing July 5, 2019, the City Council hereby authorizes and establishes the rates for the sewer service charges in the amounts set forth in Exhibit "A".

SECTION 3. Commencing July 1, 2020, through and including July 1, 2023, the City Council hereby authorizes annually passing through to customers any IEUA Pass Through. Any IEUA Pass Through may be implemented for the four year period commencing July 1, 2020, through and including July 1, 2023, provided, however, that: (1) any increase in the rates for the IEUA Charge set forth in Exhibit "A" as a result of any IEUA Pass Through shall not exceed 10% per year; and (2) in no event shall such rates be increased as a result of an IEUA Pass Through by more than the cost of providing sewer service. Any IEUA Pass Through will only impact the rates for the IEUA Charge set forth in Exhibit "A". Prior to implementing any increase in the sewer service charges as a result of any IEUA Pass-Through, the City shall cause notice to be mailed at least 30 days in advance of the effective date of the IEUA Pass-Through.

SECTION 4. The City Council hereby authorizes and directs the City Manager to implement and take all actions necessary to effectuate the rates for the sewer service charges set forth herein.

SECTION 5. Chapter 3, Title 6, Volume 1 of the Ontario Municipal Code, entitled Integrated Solid Waste Management, is replaced in its entirety as provided for in Exhibit B hereto. Section 6-7.703 of Article 7, Chapter 7, Title 6, Volume 1 of the Ontario Municipal Code, entitled Sewer Revenue Charge Rates, and Section 6-8.51 of Chapter 8B, Title 6, Volume 1 of the Ontario Municipal Code, entitled Service Fees and Charges, are amended in their entirety and replaced as provided for below:

"Sec. 6-7.703. Sewer revenue charge rates.

In addition to other fees, assessments, or charges provided by the Municipal Code or adopted by the City Council, the owner or occupant of any parcel of property for which no other sewer service charge is provided, and which parcel of property is connected to the sewer system of the City, shall pay monthly sewer service charges as established from time to time by resolution of the City Council.

Sec. 6-8.51. Service fees and charges.

(a) Residential, non-residential, and private fire service water fees and charges. In addition to other fees, assessments, or charges provided by the Municipal Code or adopted by the City Council, the owner or occupant of any parcel of property for which no other water service fee or charge is provided, and which parcel of property is connected to the water system of the City, shall pay monthly water service fees and charges as established from time to time by resolution of the City Council.

(b) Turning water supply on and off. No charge shall be made for shutting off and turning on water supply when requested by the customer for the closing of an old account or the beginning of a new one. When service has been discontinued due to non-payment of utility bills or for any infraction of the rules, the charges to restore water service shall be as listed above. The customer shall pay these charges, plus the amount of any outstanding bills before service can be restored.

(c) Construction water. All construction water shall be metered and charged.

(d) Reserved.

(e) Water meter testing fee. Water meter testing fee shall be based on the actual costs of removal, testing and reinstallation of the meter.

(f) Bacterial coliform examination fee. The City, as part of its inspection fees, shall assume the cost of the first set of examinations.

(g) Other water service work. This charge is based on actual time, travel and material cost based on the City's burden of labor and overhead rates in effect at the time service is provided.

(h) Outside City services. For water furnished to any customer outside the City limits, the rates shall be double the rates charged inside the City. The City Council may, however, provide otherwise by written agreement with any city, county, or other governmental agency.

(i) Charges for agricultural use. Charges for usage of recycled water for agricultural service where the agricultural use provides assignment of water production rights to the City shall be determined by the Utilities General Manager; provided, however, such charges will be consistent with the most recent rate study and current rates charged by the Chino Basin Watermaster for replenishment assessments.

(j) Charges for unmetered service. Unmetered usage of water and charges for unmetered usage of water shall be authorized by the Utilities General Manager prior to such usage; provided, however, such charges shall be reasonably in accordance with the charges established by resolution adopted by the City Council."

SECTION 6. If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 7. This Ordinance shall supersede all other previous City Council resolutions and ordinances that may conflict with, or be contrary to, this Ordinance. In the event that the sewer service fees adopt herein conflict with any other fees or charges previously adopted by the City, it is the express intent of the City Council that the sewer service fees adopted hereby shall control.

SECTION 8. The City Council hereby authorizes future rates for sewer service fees to be adopted by resolution or ordinance. To the extent the City adopts future rates for sewer service fees by resolution, and such future adopted rates for sewer service fees conflict with this or any other ordinance adopted by the City, the resolution adopting future rates for sewer service fees shall control and supersede.

SECTION 9. This Ordinance shall become effective thirty (30) calendar days after its adoption by the City Council.

SECTION 10. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 4th day of June 2019.

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. 3133 was duly introduced at a regular meeting of the City Council of the City of Ontario held May 7, 2019 and adopted at the regular meeting held June 4, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3133 duly passed and adopted by the Ontario City Council at their regular meeting held June 4, 2019 and that Summaries of the Ordinance were published on May 14, 2019 and June 11, 2019, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

**EXHIBIT A TO
ORDINANCE NO. 3133**

(a) The rate structure for City sewer service charges is comprised of two components: (1) a charge for capital replacement, operations and maintenance, billing, customer service, and other related costs (“City Charge”); and (2) a treatment charge for costs imposed on the City by Inland Empire Utilities Agency (“IEUA Charge”) that is passed through by the City to its sewer customers.

(b) The monthly charges for sewer services shall be the sum of the IEUA Charge as listed under sub-section (c) below plus the City Charge as listed under sub-section (d) below.

(c) The current rate for the IEUA Charge per equivalent dwelling unit (“EDU”) is \$18.39, and the adopted rates for the IEUA Charge per EDU effective July 5, 2019, is \$20.00. Future rate increases adopted by the IEUA Board of Directors and imposed on the City for the treatment of wastewater discharged and collected in the City shall be passed through to City customers at the rates adopted by IEUA (each such rate increase by the IEUA is referred to herein as a “Pass Through”). Once adopted by the IEUA Board of Directors, the actual Pass Through will be applied to the rates for the IEUA Charges as follows:

1. The monthly rate for the IEUA Charge per unit for single-family residential property shall be equal to the charge per one (1) EDU.
2. The monthly rate for the IEUA Charge per unit for multiple-family residential property shall be equal to the charge per seven tenths of one (0.7) EDU.
3. The monthly rate for the IEUA Charge for non-residential customers shall be equal to the charge per one (1) EDU multiplied by the number of EDUs assigned to the non-residential customer’s property.

(d) The monthly rates for the City Charge for single-family and multiple family residential customers are billed on a per residential building unit basis. The rates for certain non-residential customers are billed on a EDU basis. The rates for these customers shall be as follows:

Customer Classification	City Charge Rates (\$/EDU or unit)	
	Current Rates	Effective 07/05/2019
Single Family Residential per Month per Unit	\$13.63	\$13.63
Multiple Family Residential per Month per Unit	\$13.10	\$13.10
Non-Residential per Month per EDU (1)	\$13.63	\$13.63

(e) In addition to the EDU Charge listed above, the City Charge for certain non-residential customers also includes a Unit Charge, as set forth below. The Unit Charge is not being increased:

City Charge Rates Per Building or Room for Non-Residential Customers	Current Rates (\$)	Rates (\$) Effective 07/05/2019
Hotel/Motel per room charge	8.55	8.55
Professional Offices per building unit charge	13.45	13.45
Other Commercial per building unit charge	32.90	32.90
Categorical/Significant Industry per permitted unit	123.00	123.00
Class II Industry per permitted unit	123.00	123.00
Other Industries per permitted unit	61.60	61.60

**EXHIBIT B TO
ORDINANCE NO. 3133**

CHAPTER 3: INTEGRATED SOLID WASTE MANAGEMENT

Article 1: General Provisions

- 6-3.101 Declaration of policy
- 6-3.102 Purpose and objectives
- 6-3.103 Administration
- 6-3.104 Applicability
- 6-3.105 Exclusive jurisdiction
- 6-3.107 Definitions

Article 2: Prohibitions

- 6-3.201 Accumulations
- 6-3.202 Burning of solid waste
- 6-3.203 Contamination of green waste and commingled recycling
- 6-3.204 Dangerous and infected substances
- 6-3.205 Dead animals
- 6-3.206 Dumping and burying
- 6-3.207 Scavenging
- 6-3.208 Solid waste not subject to routine collection
- 6-3.209 Unauthorized containers

Article 3: Solid Waste Services

- 6-3.301 Responsibility to provide for collection
- 6-3.302 Placement of solid waste in containers
- 6-3.303 Maintenance of collection containers
- 6-3.304 Responsibility to provide for and use integrated waste collection services
- 6-3.305 Exemption from service
- 6-3.306 Residential collection containers
- 6-3.307 Residential collection frequency
- 6-3.308 Residential receptacles, placement
- 6-3.309 Residential collections of bulky items
- 6-3.310 Responsibility to provide for and use collection services
- 6-3.311 Commercial collection containers
- 6-3.312 Commercial collection frequency
- 6-3.313 Commercial containers, placement
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Article 4: Rates and Provisions for Services and Billing

- 6-3.401 Integrated waste collection charges
- 6-3.402 Special service charges
- 6-3.403 Waiver of advanced payment or deposit
- 6-3.404 Physically challenged/elderly discount
- 6-3.405 Set-out/set-back service
- 6-3.406 Excess tonnage, weight violations
- 6-3.408 Abatement collection charges
- 6-3.409 Collection fees, customers to be billed
- 6-3.410 Collection and payment
- 6-3.411 Collection, delinquent fees

Article 5: Allowable Composting and Recycling

- 6-3.501 Backyard residential composting
- 6-3.502 Commercial collection of recyclables and organics
- 6-3.503 Permit required
- 6-3.504 Permit application
- 6-3.505 Permit conditions
- 6-3.506 Appeal
- 6-3.507 Public access to information and confidentiality
- 6-3.508 Commercial collection of recyclables, property owner responsibility
- 6-3.509 Charitable organizations
- 6-3.510 Disposal of recyclables and organics

Article 6: Business Recycling Requirements

- 6-3.600 Purpose
- 6-3.601 Business recycling plan
- 6-3.602 Construction and demolition recycling plan
- 6-3.603 Alternative compliance
- 6-3.604 Mandatory business recycling
- 6-3.605 Mandatory commercial business organics service

Article 7: Reduction and Reuse Provisions

- 6-3.701 City recycled goods policy

Article 1: General Provisions

Sec. 6-3.101. Declaration of policy.

The City Council of the City of Ontario hereby finds and declares:

- (a) The intent and purpose of this chapter is to comply with state law on solid waste management as it is found in California Public Resources § 40000 *et seq.*

(b) State law requires local agencies such as the City to control and reduce their waste streams, and meet per capita waste generation goals each year. This reduction requires an ongoing evolution of the practices within the City to include elements that reduce waste generation, promote reuse and require collection of recyclables and organic waste.

(c) The accumulation, collection, removal, disposal, composting, and recycling of solid waste shall be controlled by the City for the protection of the public health, safety and welfare and to contribute toward the diminution of health hazards and pollution in the City. The City Council finds that to give practical effect to this policy, a comprehensive system for the periodic collection, removal, disposal, composting and/or recycling of integrated waste from all premises in the City is essential and benefits all residents of the City; therefore, all such occupants are made responsible for the collection, disposal, composting, and/or recycling of solid waste.

(d) The provisions of this chapter shall control in the event of any inconsistencies between this chapter and any other City ordinances, resolutions, or other written arrangements.

(e) Nothing in this chapter shall limit the right of an individual person, organization, or other entity to donate, sell or otherwise dispose of recyclables or organics, provided that any such donation, sale or disposal is in accordance with the provisions of this chapter.

(f) The City Manager shall be responsible for reviewing solid waste collection services, contracts, permits, fees and rates and for making recommendations on the administration of the above to the City Council for final approval.

Sec. 6-3.102. Purpose and objectives.

This chapter sets forth uniform requirements and regulations for the direct and indirect users of the solid waste collection services of the City. It also allows for the City to comply with all applicable state and federal laws, including, but not limited to, The Integrated Waste Management Act of 1989, California Code Title 14 Division 7 and any subsequent amendments to each.

Sec 6-3.103. Administration.

Except as otherwise provided in this chapter, the City Manager shall administer, implement, direct and cause enforcement of the provisions of this chapter. Whenever any power is granted to or a duty is imposed upon the City Manager, the City Manager or his or her designee shall exercise this power or perform this duty.

Sec 6-3.104. Applicability.

This chapter shall apply to all users of the City's non-organic waste, recycling, green waste and other organics collection services within the City and to users outside the City who are by permit, contract, or agreement with the City, users of the City's non-organic waste, recycling and green waste and other organics collection services or are conducting business or activities within the City which fall under the provisions of this chapter.

Sec 6-3.105. Exclusive jurisdiction.

(a) The collection of all solid waste within the City shall be performed under the direction of the City Manager, and for such purposes, the City may use City personnel, enter into contract agreements with private hauling firms or approve franchise agreements to perform such collection, provided that the City shall respect all continuation rights required by the Public Resources Code,

(b) Residential integrated waste management collection services and commercial integrated waste management collection services shall be provided exclusively by or under the direction of the City. A solid waste enterprise may not provide waste collection services except as authorized by the City pursuant to § 6-3.105(a). This section does not prohibit the commercial collection of recyclables or organics pursuant to §§ 6-3.502 through 6-3.510, provided all such commercial collection of recyclables or organics complies with the provisions of this chapter.

(c) No person shall provide collection or integrated waste services within the City without the City's approval, which approval shall be issued only on a vote of the City Council and may be removed for failure to comply with the health and sanitation regulation of the City and San Bernardino County.

(d) Each violation of this section will be considered an infraction and subject to penalties listed in § 1-2.01.

Sec. 6-3.107. Definitions.

For the purpose of this chapter, unless otherwise apparent from context, certain words and phrases used in this chapter shall have the meanings hereinafter designated. The definitions in this chapter are included for reference purposes only and are not intended to narrow the scope of definitions set forth in federal or state laws or regulations. Words used in this chapter in the singular may include the plural and the plural may include the singular. Use of the masculine shall also mean feminine and neuter.

(a) "Account." A statement or record utilized by the City for billing customers that receive integrated waste services.

(b) "Administrator." The City Utilities Manager or his or her designee.

(c) "Bin." City provided or privately owned integrated waste containers, generally with a lid, that are collected by a front-loading collection vehicle.

(d) "Bulky item." Any item unable to be collected through normal collection method, such as appliance, furniture or bundled brush.

(e) "Business recycling plan." A business recycling plan as set forth in § 6-3.601.

(f) "C & D" or "construction and demolition debris." Lumber, paper, cardboard, metals, masonry (brick, concrete, and the like), carpet, plastic, pipe (plastic, metal, and clay), drywall, rocks, dirt, and green waste related to land development. These materials produce debris that is not hazardous waste, defined by Public Resources Code § 40141.

(g) "Cart." The City-provided plastic, solid waste container with a tight-fitting lid and wheels, collected by automated side-loading collection vehicle. Carts may be in the sizes and colors determined by the City.

(h) "City." The City of Ontario, California.

(i) "City Manager." The chief administrative officer of the City of Ontario or his or her designee.

(j) "Collection." The operation of gathering together and transporting of discarded materials subject to this Chapter to a point of disposal and/or recycling or composting center/facility.

(k) "Collector." A person employed by the City or any other person (or the agents or employees thereof) whom the City shall have contracted with to collect, carry, transport, compost, and/or recycle non-organic waste, recyclables and organics within the City.

(l) "Commercial." A business, industrial, commercial establishment, or construction site and any multiple-family residential dwellings with five (5) units or more on one account.

(m) "Commercial Recycler Collection Permit." A permit issued by the Integrated Waste Department of the Ontario Municipal Utilities Company pursuant to Article 5 herein, for the hauling of commercial recyclables.

(n) "Compactor." A privately owned receptacle for compressing waste used in commercial establishments, collected by a front-loading or a roll-off vehicle.

(o) "Compost." The product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal waste stream or which are separated at a centralized facility.

(p) "Container." A cart, bin, roll-off, compactor or similar receptacle used to temporarily store solid waste, organics or recyclables for collection service.

(q) "Customer." The owner and/or occupant of any property within the City that is required to participate in the City's integrated waste, including green waste, other organics and recyclables collection program.

(r) "Divert." To use material for any purpose other than disposal in a landfill or transformation facility.

(s) "Food waste." Discarded raw, cooked, or processed edible substances, ices, beverages, ingredients used or intended for use or for sale in whole or in part for human consumption, and chewing gum. Food waste is a subset of organics.

(t) "Green building." The use of materials in a more efficient manner. Green building practices can include salvaging dimensional lumber from structures, using reclaimed aggregates, or designing the structure in way that requires less material.

(u) "Green waste." Tree and shrubbery trimmings, tree roots less than six (6) inches in diameter, vegetation matter resulting from land clearing, grass, weeds, straw, or leaves, wood chips, sawdust and other household garden organic materials which have been segregated from other solid waste materials for the purpose of deposit at a designated collection location, including curbside location, for collection and transportation to a compost facility. Green waste does not include palm fronds, cactus or tree limbs, roots or stumps larger than six (6) inches in diameter. Green waste is a subset of organics.

(v) "Hazardous waste." A waste, or combination of wastes, which because of its quantity, concentration or physical, chemical, or infectious characteristics may do either of the following:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Unless expressly provided otherwise, "hazardous waste" includes extremely hazardous waste and acutely hazardous waste.

(w) "Integrated Waste." The City's Integrated Waste Department.

(x) "Non-organic waste." Solid waste that does not include recyclables and organics. Solid waste shall include food waste unless collection of food waste is provided for separately or as part of organic waste collection services.

(y) "Occupant." One who has certain legal rights to or control over the premises occupied; a tenant or owner.

(z) "Organics," "organic waste" and "organic material." Solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges. Organics are a subset of solid waste.

(aa) "Person." An individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(bb) "Property owner." The record owner of a property and includes the homeowner/business owner association of a residential/business condominium project.

(cc) "Recyclable materials" or "recyclables." Non-organic reusable waste materials, including but not limited to, metal, glass, and plastic that are to be collected, separated or processed and used as raw materials. "Recyclables" may include paper products, printing and writing paper, wood and dry lumber and textiles. Recyclables are a subset of solid waste.

(dd) "Recycle" or "recycling." The process of collecting, sorting, cleansing, treating, and reconstructing materials that would otherwise become refuse or garbage, and returning them to the economic mainstream in the form of raw material for new, revised, or reconstituted products which meet the quality standards necessary to be used in the marketplace. This includes, without limitation, items intended for "re-use" or "personal use," irrespective of their intended return to economic mainstream or marketplace.

(ee) "Residential." Any residential dwelling or apartment house.

(ff) "Reuse." Further or repeated use of construction or demolition debris.

(gg) "Roll-off bin or roll-off." A compactor or open-top City-owned or private container collected by a roll-off collection vehicle.

(hh) "Scavenging." The removal of any solid waste material without authorization of the property owner and/or the City.

(ii) "Solid waste." All putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. Solid waste does not include hazardous, radioactive waste or medical waste.

(jj) "Solid waste enterprise." An entity authorized by the County of San Bernardino or other regulatory authority to provide integrated waste services in such area prior to its annexation by the City.

Article 2. Prohibitions

Sec. 6-3.201. Accumulations.

(a) Every person owning or occupying any building, lot or premises in the City shall keep such property in a clean and sanitary condition; this includes placing all solid waste in the appropriate container with the exception of bulky items. The property owner or occupant shall not cause or permit organic waste to collect or accumulate for more than one (1) week, or cause or permit any other solid waste to accumulate for a period in excess of one (1) month; provided, however, the provisions of this section shall not be construed to interfere with any occupant keeping building materials upon premises during construction, reconstruction, or repair of a building or structure thereon under a valid building permit, nor with the keeping of wood neatly piled upon such premises for household use.

(b) The Administrator may require a greater number of collections per week or may require placement of additional containers upon finding that an unhealthful, unsightly, or public nuisance exists under the current service level. In such an event, the customer shall pay for additional collections and/or containers at the current fee schedule. Prior to imposing such a requirement and rate adjustment, the City shall provide at least two (2) written notifications at least seven (7) days apart to the customer as listed on the City billing. The customer may appeal such a determination in writing to the City Manager within seven (7) days of the second notice. The City shall not impose the service adjustments until the seven (7) day appeal period has passed, or if appealed, until the City Manager determines the outcome of the appeal.

(c) If a member of the Integrated Waste staff observes that a property owner or occupant has violated this section, Integrated Waste staff will notify Code Enforcement. If the Code Enforcement officer determines a violation of this section, the Code Enforcement officer will tag the container or property with a notice of violation requiring the property owner or occupant to bring the property into compliance. It is expected that the property owner's or occupant's attempt to comply with the directives of the notice of violation will require input from the Integrated Waste Department. If the property owner or occupant does not respond to or comply with the notice of violation, the City will take the necessary steps to bring the property into compliance, including, if necessary, cleaning and sanitizing the container and area. The property owner shall be held responsible for all fees and costs incurred as a result of the City bringing the property into compliance.

Sec. 6-3.202. Burning of solid waste.

No solid waste shall be burned within the City.

Sec. 6-3.203. Contamination of green waste and commingled recycling.

(a) No person shall place in any container identified for recyclables, green waste, food waste or organics any material other than the identified material. The containers set aside for recyclables, green waste, food waste or organics shall be used only for recyclables, green waste, food waste or organics and no other materials.

(b) If, upon inspection by the Collector, it is determined that the recyclables, green waste, food waste or organics container is contaminated, it shall be tagged and the container shall not be collected. If the customer wishes a special return collection prior to the next scheduled collection day, the customer shall be charged for the special collection. Charges for special collection are listed in § 6-3.402 of this chapter.

Sec. 6-3.204. Dangerous and infected substances.

(a) No person shall place or deposit in any container for collection pursuant to the provisions of this chapter any unbroken and exposed hypodermic needles, medicines, pills, poisons, caustic acids, explosives or similar dangerous substances which may cause human injury or harm.

(b) No person shall place or deposit in any container for collection pursuant to the provisions of this chapter wearing apparel, bedding or other articles from any home or place where any infectious or contagious disease has prevailed. The owner or occupant of any premises where an infectious or contagious disease has prevailed shall forthwith notify the San Bernardino County Health Officer and shall dispose of such articles in accordance with his or her directions.

Sec. 6-3.205. Dead animals.

(a) No person shall place or deposit upon any public street, park, or alley or in any container for the collection pursuant to the provisions of this chapter, any dead animal.

(b) The bodies of any dead animals within the City shall be promptly removed to such place as may be designated by the Administrator. In the event the owner of such dead animal is known, such owner shall pay the cost of removal of the dead animal. If such animal is found upon any public street, park or alley or upon private property, the City shall arrange for the removal of such dead animal in the event the owner of such dead animal is not found.

Sec. 6-3.206. Dumping and burying.

No person shall dump, place or deposit upon or bury in any lot, land, street, alley, water or waterway within the City any solid waste or substance condemned by the San Bernardino County Health Department or any other deleterious or offensive substance; provided, however, the provisions of this section shall not apply to any land used by as a properly permitted landfill, transfer station, materials recovery facility, organic waste processing facility or similar use.

Sec. 6-3.207. Scavenging.

(a) Only the City or a holder of a Commercial Recycler Collection Permit shall remove any recyclables or organics, which have been segregated from other solid waste, and placed at the curbside or at a designated collection location for recyclables or organics collection.

(b) The recyclables or organics are the property of the City or the holder of a Commercial Recycler Collection Permit upon the placement of the container for collection. No unauthorized person shall remove non-organic waste, recyclables or organics from City containers.

(c) In any civil action by the City against a person alleged to have violated any provision of this section, the court may award a civil penalty of not more than One Thousand Dollars (\$1,000.00) for each unauthorized removal against the unauthorized person removing the solid waste.

(d) Violation of this section is unlawful and shall be a misdemeanor. Each separate unauthorized removal shall be a separate violation.

Sec. 6-3.208. Solid waste not subject to routine collection.

Solid Waste not subject to routine collection shall include large household appliances, furniture, logs, stumps, construction waste, dirt or junked automobiles or automobile parts.

Sec. 6-3.209. Unauthorized containers.

(a) Containers used to collect solid waste placed in the City by unauthorized haulers are subject to impoundment. Containers shall be placed in a storage facility and the hauler shall be responsible for all fees incurred as a result of the impoundment.

(b) Containers violating this section of the chapter shall be tagged by Code Enforcement, or Integrated Waste Department staff, for removal within twenty-four (24) hours. If the container is not removed within twenty-four (24) hours, the container will be impounded by the City without granting any further notice or warning. The confiscated container will be placed in a storage facility and the hauler shall be responsible for all fees incurred as a result of the impoundment.

Article 3. Solid Waste Services

Sec. 6-3.301. Responsibility to provide for collection.

The property owner or occupant of any residential unit within the City is responsible to provide for the removal of solid waste from such premises in accordance with provisions of this chapter.

Sec. 6-3.302. Placement of solid waste in containers.

(a) All solid waste shall be placed in suitable containers furnished by the City.

(b) Ashes shall be thoroughly moistened to prevent them from scattering and starting the container on fire.

(d) Dog droppings, sanitary napkins, and items that are unsanitary and offensive shall be securely wrapped and placed in the non-organic waste container.

(e) Hazardous wastes such as, but not limited to, pesticides, used motor oil and other lubricants, car batteries, television and computer monitors, and tires shall not be placed into the City's containers. Household hazardous waste may be disposed of properly by being taken to household hazardous waste collection centers or any other designated collection points.

(f) All lubricants, such as motor oil, shall be disposed of in the proper manner by being taken to a household hazardous waste drop-off center or any other officially designated collection point.

(g) All solid waste placed in a container shall be placed loosely in such container so as to ensure the ease of disposal.

(h) All materials placed into container shall be contained within said container and lid, if applicable, shall be shut completely. Until removed by the collector, the customer shall be responsible for the clean-up of any and all discards which the customer has generated, dumped, spilled or otherwise lost or littered, notwithstanding human and animal interference, wind or other natural forces and weather during storage, collection, removal or transfer. The collector shall be responsible for any discards spilled during collection, removal or transfer by the collector.

Sec. 6-3.303. Maintenance of collection containers.

All collection containers shall be kept in clean and sanitary condition by the owner or person using the same.

Sec. 6-3.304. Responsibility to provide for and use integrated waste collection services.

(a) Every person owning or occupying a residential unit within the City shall provide for integrated waste collection services in accordance with the provisions of this chapter.

(b) It shall be unlawful for the owner or occupant of any residential unit within the City to fail or neglect to provide for the removal of non-organic waste, recyclables, green waste or other organics from such premises in accordance with provisions of this chapter.

Sec. 6-3.305. Exemption from service.

Any customer may make an application for exemption from integrated waste collection services on the basis that a developed property is unoccupied, and that no non-organic waste, green waste, other organics or recyclable materials shall be placed or offered for collection by the City or its authorized collector, from such property. The Administrator may temporarily exempt such property from participation in the City's integrated waste collection program for the limited period while the property is unoccupied; provided, that any such statement or representation shall be made in affidavit form, fully sworn to by the person making such statement or representation and filed with the Administrator. An exemption shall be valid only for the time that the statements made in the affidavit continue to be true. Any violation of provisions of the exemption shall result in termination of the exemption and shall require the customer to subscribe to the integrated waste collection services in accordance with this chapter.

Sec. 6-3.306. Residential collection containers.

As many needed City-provided carts may be used and shall be charged according to the integrated waste schedule of charges contained in § 6-3.401(a).

Sec. 6-3.307. Residential collection frequency.

All non-organic waste, recycling, green waste and other organics shall be collected from residential units a minimum of one (1) time per week. The City shall specify the number and different types of carts which are required.

Sec. 6-3.308. Residential receptacles, placement.

(a) Residential non-organic waste, recycling, and green waste carts shall be placed for collection by 6:00 a.m. on the scheduled collection day, but not prior to the evening preceding the collection day. Carts shall be removed no later than the evening after collection day. Such carts shall be placed for collection along the alley where a useable alley exists. Where there is no useable alley, such carts shall be placed for collection near the street curb. Where no curbs or walks exist, such carts shall be placed in a location convenient for collection along the street right-of-way and placed at least three (3) feet from any mailboxes, cars, or any other obstructions for safety and efficiency.

(b) Any obstructing object(s) that prevent the integrated waste collector from collecting residential carts will be reported to Code Enforcement. The Code Enforcement officer will tag the obstructing object(s) (e.g. basketball hoop) with a notice of violation requiring immediate removal. If the property owner is issued two (2) notice of violations for the same obstructing object(s), the City will impound the object(s) without granting any further notice or warning. The confiscated object(s) will be placed in a storage facility and the property owner shall be responsible for all fees incurred as a result of the impoundment.

(c) If the provisions of this section are not fully complied with, the Integrated Waste Collector shall place a tag indicating a violation on the cart. No collection shall be made until the provisions of this section are complied with. The resident may request a collection prior to the next scheduled collection date and shall be charged as listed in § 6-3.401(a) of this chapter.

(d) It shall be the customer's responsibility to provide means of entering and exiting premises, adequate collection vehicle turning radius, and vertical and horizontal clearance for the integrated waste collectors and equipment.

(e) In all cases of dispute or complaints arising from or concerning the place where carts from residential units shall be placed while awaiting the removal of their contents, the Administrator shall forthwith designate the place and his or her decision shall be final.

(f) Residential customers may receive bin service when permitted by the Administrator. Except as otherwise determined by the Administrator, bin service shall be subject to the same provisions in this chapter for residential cart service.

Sec. 6-3.309. Residential collections of bulky items.

(a) Residential customers are entitled to four (4) bulky item pick-ups per calendar year as part of the regular residential monthly service fees, on an appointment basis that is to be made one (1) week prior to the desired collection day. Items are to be identified to ensure efficient and proper collection. Additional collections are subject to charges listed in § 6-3.401(a) of this chapter.

(b) Materials to be collected shall be limited to five (5) individual items that can be easily handled by two (2) persons.

(c) If the bulky item pick-up exceeds the customer's bulky item collection limits as specified in subsections (a) or (b), the City may pick up the bulky item and charge the customer according to fees listed in § 6-3.401(a).

Sec. 6-3.310. Responsibility to provide for and use collection services.

(a) The property owner or occupant of any commercial establishment within the City shall make arrangements for the removal of non-organic waste, recyclables, green waste and other organics from such premises in accordance with provisions of this chapter.

(b) It shall be unlawful for the owner or occupant of any commercial establishment within the City to fail or neglect to provide for the removal of non-organic waste, recyclables, green waste or other organics from such premises in accordance with provisions of this chapter.

Sec. 6-3.311. Commercial collection containers.

All commercial establishments shall utilize one of the various sizes of bins, roll-offs or other containers available through the City for the collection of non-organic waste, recyclables, green waste and other organics. The commercial establishment may utilize cart service with the Administrator's consent, and the Administrator shall otherwise establish the minimum level of required collection service pursuant to the procedures in § 6-3.201.

Sec. 6-3.312. Commercial collection frequency.

All non-organic waste, recycling, green waste and other organics generated at commercial establishments shall be collected a minimum of one (1) time per week. Roll-off service shall be provided a minimum of one (1) time every 14 days if the collection material is free from putrescible material, or the container may be removed. The Administrator may otherwise establish the minimum level of required collection service pursuant to the procedures in § 6-3.201.

Sec. 6-3.313. Commercial containers, placement.

(a) All commercial collection carts, bins, roll-offs or other containers shall be placed in an area approved by the City, which shall be easily accessible to the Integrated Waste Collector.

(b) In all cases of disputes or complaints arising from or concerning the placement of carts, bins, roll-offs or other containers, a written notice shall be given to the City. In all cases of disputes or complaints, the Administrator shall designate the placement, and his or her decision shall be final.

Sec. 6-3.314. Commercial storage standards.

All new development projects utilizing commercial collection bins rather than cart collection of non-organic waste which:

- (a) Have submitted a site plan on or after September 1, 1993 for development plan review as prescribed by Title 9, Planning and Zoning;
- (b) Are existing development projects which will be adding thirty percent (30%) or more to the existing floor area; or
- (c) Are existing development projects which will be adding one thousand (1,000) square feet or more, shall meet the requirements of this section.

All qualifying development projects shall include an area set aside for the provision of adequate and accessible enclosures for the storage of recyclables, non-organic waste and organics in proper containers. The design, construction and accessibility of the enclosures shall be shown on the site plan in conformance with the standards and specifications of the Integrated Waste Department and the design guidelines adopted by the City's Planning Department.

Article 4. Rates and Provisions for Services and Billing

Sec. 6-3.401. Integrated waste collection charges.

(a) In addition to other fees, assessments or charges provided by the Municipal Code or adopted by the City Council, the owner or occupant of any residential premises or any commercial establishment shall pay monthly integrated waste service charges as established from time to time by a resolution of the City Council.

(b) The Revenue Services Department shall collect all charges authorized by the City Council pursuant to this section.

(c) The City Council may require any person liable for payment of an integrated waste service charges to make a reasonable advanced payment with the Revenue Services Department as security for the payment of such charges.

(d) All monies received from the collection of integrated waste shall be deposited in the integrated waste fund of the City.

Sec. 6-3.402. Special service charges.

(a) Charges for special services shall be based on actual costs of collection and disposal as determined by the Administrator.

(b) The Administrator may establish charges for integrated waste collection services, for special events, or other special circumstances.

Sec. 6-3.403. Waiver of advanced payment or deposit.

(a) Any customer may make a request for a waiver of the advanced payments required for temporary residential and construction site commercial bin service, residential roll-off service, and commercial roll-off service. The Administrator has the authority, in his or her sole discretion, to grant a waiver of any such advanced payments. In exercising such discretion, the Administrator shall take into account the following conditions:

(1) Whether the customer has maintained an active water or integrated waste account for at least six (6) months;

(2) Whether the customer has kept the water or integrated waste account current and has a good payment history; and

(3) That the weekend and construction site bin service shall not be used by the customer for cleaning up the property for the purpose of vacating said property.

(b) Any customer may request a waiver for deposit fees for residential integrated waste services if the customer resides in a newly annexed area of the City and integrated waste service to the customer was previously provided by a solid waste enterprise. Customer shall be required to provide proof of previous service in the form of a bill in order to obtain a waiver. The Administrator has the authority, in his or her sole discretion, to grant a waiver of any such deposits.

Sec. 6-3.404. Physically challenged/elderly discount.

Eligible customers may apply for and receive a physically challenged or elderly discount pursuant to § 6-8.50.

Sec. 6-3.405. Set-out/set-back service.

Physically challenged and/or elderly customers with infirmities, who do not have an able-bodied person assisting with their household or business activities, may receive set-out/set-back service for automated containers upon written request on the proper form to and approval by the Administrator. The request shall describe the infirmity and/or other factors, and the care they are receiving from a family member, a service provider or other assistant, for their infirmity, which require the applicant to receive such service. For those persons approved for the service there shall be no additional charge. The applicant may be requested to re-certify to the City upon notice. If the City deems it necessary, the applicant may be required to provide proof of the physical challenge or infirmity from a physician.

Sec. 6-3.406. Excess tonnage, weight violations.

All roll-offs and compactors are limited to a maximum of twelve (12) tons. It is the customer's responsibility to ensure that the containers are not overloaded, and the load contents are balanced for safe collection. If the contents are not balanced, or excess tonnage is apparent, the City may require excess tonnage to be off-loaded by

the customer prior to City collection. In the event the City hauls excess tonnage, charges for violation of weight limitations in excess of twelve (12) tons of solid waste matter per commercial roll-off shall be imposed in addition to the existing disposal charges in effect at the time of disposal for actual weight over twelve (12) tons.

Sec. 6-3.408. Abatement collection charges.

All forms of solid waste not otherwise collected through normal integrated waste service may be collected by the City for such charges as the Administrator shall determine as reasonable.

Sec. 6-3.409. Collection fees, customers to be billed.

The fees established by the City Council shall be billed to and paid for by the property owner; provided, however, that the owner shall have the right to reimbursement from the respective occupants or proprietor for whose benefit the charge is paid. For residential users, such fees may be billed to and paid for by the owner, occupant, tenant or lessor. Fees may be established or amended by resolution.

Sec. 6-3.410. Collection and payment.

The City may use a unified billing system for City-furnished services. The charges for water, integrated waste, storm water abatement and wastewater services may be billed on the water bill and collected as one (1) item. Failure to pay the amount due in full will result in penalties listed in § 1-2.01.

Sec. 6-3.411. Collection, delinquent fees.

Any delinquent fees are subject to the provisions of § 1-2.07.

Article 5. Allowable Composting and Recycling

Sec. 6-3.501. Backyard residential composting.

(a) Notwithstanding any other provision of this chapter, residents are encouraged to compost green waste, including grass clippings, leaves, plant trimmings, wood ashes and vegetable kitchen scraps (but not including other household refuse or animal wastes). The following conditions regarding composting must be met:

(1) Compost piles or containers are located in the rear or side yard, not visible from a public street, and no greater than five (5) feet in height;

(2) The compost piles or containers are at least five (5) feet from the property line or separated from adjacent property by a solid wall;

(3) Compost piles are maintained so that they do not generate an offensive odor or harbor rodents;

(4) The maximum size of any pile or container is five (5) feet in height by five (5) feet in width by five (5) feet in length;

(5) The compost is enclosed, screened or otherwise maintained to minimize insects or pests; and

(6) The pile or container shall not permit surface run-off or leachate to another property.

(b) The Administrator may authorize, for educational purposes, the creation of a composting demonstration area visible to the public at a City park or other facility.

(c) No composting shall be permitted at any location that is determined to be a fire hazard by the City's Fire Department.

Sec. 6-3.502. Commercial collection of recyclables and organics.

Written authorization to collect recyclables or organics within the City is required. This written authorization shall be in the form of a Commercial Recycler Collection Permit. No vested right shall be given by issuance of permits provided for in this section. The City reserves the right to establish by Municipal Code or in Commercial Recycler Collection Permits, requirements on collection for recyclables and organics if deemed appropriate by the Administrator.

Sec. 6-3.503. Permit required.

Businesses seeking to conduct business as a commercial collection recycler to collect and haul recyclables and organics within the City shall obtain a Commercial Recycler Collection Permit.

Sec. 6-3.504. Permit application.

(a) Businesses seeking to obtain a Commercial Recycler Collection Permit shall complete and file with the City, prior to commencing collection efforts, an application on the forms prescribed by the City, and pay any applicable application fees. Any such business collecting recyclables or organics in the City shall have a business license pursuant to § 3-1.105 and be registered with any other applicable regulatory authorities.

(b) Applicants may also be required to submit information related to the applicant's anticipated destination of material and potential annual tonnages as may be requested by the City to properly evaluate the permit application.

(c) The permit application may be denied if the applicant fails to establish to the City's satisfaction that the business has failed to obtain a business license, has failed to comply with the health and sanitation regulations of the City, San Bernardino County and the State of California, or if the applicant has, in the past, demonstrated an inability or unwillingness to comply with state or federal solid waste law, or the requirements set forth in this article.

(d) After evaluation of the data, the Administrator may issue a Commercial Recycler Collection Permit, subject to terms and conditions set forth in this chapter and as otherwise determined by the Administrator to be appropriate to comply with applicable law.

Sec. 6-3.505. Permit conditions.

(a) All permits shall be expressly subject to all provisions of this chapter and all other regulations, charges for use, term and fees established by the City. Commercial Recycler Collection Permit conditions shall be enforced by the City in accordance with this chapter and all applicable county, state and federal regulations.

(b) Any such business collecting recyclables or organics in the City shall furnish, at a frequency established by the City, a report of the amount of recyclables, organics and contaminated materials collected from within the City. The report shall contain the weight and type of recyclables and organics collected, the names and addresses of businesses from which the recyclables or organics were collected, and the final destination of the recyclables and organics collected. The report shall be submitted in a format necessary to meet state criteria. The report shall be considered late if submitted thirty (30) days after the date due. Failure to provide the report within thirty (30) days from the due date is hereby declared an infraction and subject to penalties listed in § 1-2.01.

(c) All such businesses holding a Commercial Recycler Collection Permit shall keep recycling and organics containers in good condition and free from graffiti. Recycling or organics containers must be kept in a clean and sanitary condition and must be appropriately sanitized upon notification from the City.

(d) Such bins, roll-offs or other containers to collect recyclables or organics by businesses holding a Commercial Recycler Collection Permit must be placed according to the standards set by the City. Such containers shall not be placed in the public right-of-way. The containers shall be placed in enclosure(s) which meet City standards when applicable. Separate containers for recyclables and organics shall be provided if applicable. Bins, roll-offs or other containers utilized by the holder of a Commercial Recycler Collection Permit shall be clearly identified by the name of the permittee and other information the Administrator may require. The Administrator may regulate the colors and look of such containers as necessary to ensure such containers are distinguishable from those utilized by the Collector.

(e) Bins, roll-offs or other containers to collect recyclables or organics by businesses holding a Commercial Recycler Collection Permit must be used exclusively for the collection of recyclable materials or organics, as applicable. Residual material must not exceed five percent (5%) in any container, as determined at the discretion of the Administrator.

(f) Each violation of this section will be considered an infraction and subject to penalties listed in § 1-2.01, and will be considered by the City cause for revocation of the Commercial Recycler Collection Permit.

(g) Any future application for a permit by any user subject to an order of revocation will be considered by the Administrator after fully reviewing the records of the revoked permit. Such records may be the basis for denial of a new permit.

(h) The Administrator may issue a permit revocation order, whereby the user must comply with all directives, conditions and requirements therein within the time prescribed. The revocation order shall contain terms and conditions to ensure compliance with this chapter. The Administrator may revoke a permit when it is determined that a permittee:

(1) Fails to comply with the terms and conditions of the permit, any provision of this chapter, a City administrative order, or a City compliance agreement;

(2) Knowingly provides a false statement, representation, record, report, or document to the City;

(3) Refuses to provide records or other documents required by the City to determine compliance with the permit or this chapter.

(i) Notice of hearing. When the Administrator has reason to believe that grounds exist for permit revocation, he or she shall give written notice thereof by personal delivery or by certified mail to the permittee setting forth a statement of the facts and grounds deemed to exist, together with the time and place where the charges shall be heard by the Administrator's designee. The hearing date shall not be less than fifteen (15) calendar days or more than forty-five (45) calendar days after mailing of such notice.

(1) At the revocation hearing, the permittee shall have an opportunity to respond to the allegations set forth in the notice by presenting written or oral evidence.

(2) After the conclusion of the hearing, the Administrator's designee shall make his or her determination and submit a written report to the City Manager setting forth a brief statement of facts found to be true, a determination of the issues presented, conclusions, and a recommendation. Upon receipt of the written report, the City Manager shall make his or her determination and should he or she find that grounds exist for permanent revocation of the permit, he or she shall issue his or her decision and order in writing within thirty (30) calendar days after the conclusion of the hearing by his or her designee. The written decision and order of the City Manager shall be sent by certified mail to the permittee or its legal counsel/representative at the permittee's business address.

(3) In the event the City Manager determines to not revoke the permit, he or she may order other enforcement actions, including, but not limited to, a temporary suspension of the permit, under terms and conditions that he or she deems appropriate.

Sec. 6-3.506. Appeal.

(a) Pursuant to § 1-4.01, any affected permittee may appeal in writing to the City Council by filing with the City Clerk a written notice of such appeal, setting forth grounds thereof. The appellant shall file such notice within fourteen (14) days after receipt of the notice of the administrative decision concerned.

(b) The order of the City Council shall be deemed final upon its adoption.

(c) If the permittee fails to appeal to the City Council, or the City Council fails to reverse or modify the administrative decision, the City Manager's administrative decision shall be deemed final.

Sec. 6-3.507. Public access to information and confidentiality.

(a) Any information in a permittee's file, which includes but is not limited to permits, permit applications, questionnaires or manifests, shall be available to other public or governmental agency without restriction.

(b) If the disclosure of the permittee's file or a portion thereof would divulge trade secrets or secret processes, the permittee shall have the right to request that such information be kept confidential. Any such claim must be made at the time of submittal of the information by marking the submittal "confidential business information" on each page containing such information.

(c) Information which is demonstrated to be confidential shall not be transmitted to anyone other than a governmental agency bound by appropriate confidentiality requirements for uses related to this chapter, and for use by the state or federal agency in judicial review or exercise of their valid regulatory authority.

Sec. 6-3.508. Commercial collection of recyclables, property owner responsibility.

For recyclables and organics collected by businesses other than the City, the property owner shall be responsible for contracting with the recycling broker(s) or commercial recycling collector(s) for regular pick-up and collection of the recyclable materials and organics. Recyclables and organics shall not be permitted to accumulate such that a visual or public health and safety nuisance is created. The City shall have the authority to abate any such nuisance and charge the property owner, recycling broker, or commercial recycling collector for the expense of abating the nuisance.

Sec. 6-3.509. Charitable organizations.

Charitable organizations conducting fund-raising events for a public purpose are exempt from § 6-3.502.

Sec. 6-3.510. Disposal of recyclables and organics.

No person, expressly including, but not limited to, anyone possessing a current, valid Commercial Recycler Collection Permit issued pursuant to this chapter, may charge a fee or receive any compensation for the collection, transport, disposal, processing or recycling of recyclable materials or organics, or any other materials including solid waste, or charge a rental fee for a container of any items to be collected within the city, and shall collect only those materials that are sold or donated by the generator thereof. Nothing in this chapter limits the right of any person to donate, sell, or otherwise dispose of his or her recyclable materials or organics.

Article 6. Business Recycling Requirements

Sec. 6-3.600. Purpose.

(a) The purpose of this article is to:

(1) Promote recycling and diversion of commercial solid waste by requiring certain specified businesses, non-residential properties, commercial buildings and construction and demolition projects to divert recyclable materials from the landfill.

(2) Comply with California Green Building Standards Code (CalGreen), requiring diversion of waste from specified construction and demolition projects.

(3) Comply with state commercial recycling laws, requiring recycling by certain specified businesses.

(4) Comply with state commercial organic waste recycling laws, requiring organic waste recycling for certain specified businesses.

(b) Each violation of this article will be considered an infraction and subject to penalties listed in § 1-2.01.

Sec. 6-3.601. Business recycling plan.

(a) A business recycling plan shall be submitted by customers using commercial collection service and proposing to conduct the following business activity:

(1) Addition of a new development for which a site plan for development review has been submitted as prescribed by Title 9, Development Code;

(2) Addition of thirty percent (30%) or more to the existing floor area of any existing development; or

(3) Addition of one thousand (1,000) square feet or more to any existing development projects.

(b) Submitted plans shall include but not be limited to the following information:

(1) A written description of the projected annual waste generation rates;

(2) The estimated type of generated waste by volume;

(3) The measures to be taken to reduce waste;

(4) The methods to be used to separate recyclable material from the waste stream and temporarily store them inside the building prior to transport to the outside storage area for collection by an authorized recycler; and

(5) Identification of the proposed business used to collect or receive recycled material.

(c) All customers subject to the provisions of this section shall submit a business recycling plan to the Administrator within thirty (30) days of receipt of written notice. Business recycling plans shall be considered complete once final approval is made by the Administrator.

(d) All customers subject to the provisions of this section and regardless of permit status, shall implement, at a minimum, the measures identified in the business recycling plan for reduction of waste.

(e) Business recycling plans shall be updated at a frequency as determined by the City.

Sec. 6-3.602. Construction and demolition recycling plan.

Wastes going to landfill from construction and demolition activities must be minimized to the greatest extent possible by recycling, deconstruction for reuse, or by use of "green building" practices. Material targeted for recycling shall include concrete, asphalt, clean wood (unpainted or untreated), brick, metal, cardboard and sheetrock. The City Manager may modify the targeted materials based on available markets.

(a) A construction and demolition recycling plan shall be submitted for conducting the following types of development activities:

- (1) The construction of any structure;
- (2) Additions or alterations of non-residential structures;
- (3) Additions or alterations of residential structures that increase the structure's conditioned area, volume or size.

(b) In preparing the construction and demolition recycling plan, customers for building or demolition permits involving the removal of all or part of an existing structure shall consider deconstruction to the maximum extent feasible.

(c) Plans may be required to be submitted on City-approved forms. Plans shall ensure the diversion of at least sixty-five percent (65%) of the total construction and demolition debris generated by the project for reuse or recycling, and shall include, but not be limited to, the following information:

- (1) The estimated volume or weight of the project construction and demolition debris to be generated, by materials type, the estimated volume or weight of construction and demolition debris that can feasibly be diverted for reuse or recycling and the estimated volume or weight of construction and demolition debris that will be hauled as refuse. In estimating the volume or weight of materials identified in the construction and demolition recycling plan, the customer shall use the standardized conversion rates approved by the City for this purpose;

(2) A drawing that identifies an area for the loading and collection of recyclable materials with appropriate access for collection vehicles;

(3) A description of how the materials will be separated at the source and/or recycled by utilizing the services of a processor;

(4) Identification of the recycled materials to be used in the construction or remodeling of the facility;

(5) Identification of the proposed vendor or facility proposed to collect or receive recycled material; and

(6) A description of green building practices in use, if any.

(d) All customers with projects subject to the provisions of this chapter shall implement, at a minimum, the measures identified in the construction and demolition recycling plan and shall demonstrate compliance with the following construction site requirements:

(1) Construction waste and demolition debris shall be removed from the construction site on a regular basis and shall not be stored on site and in the open for a period in excess of four (4) weeks, provided that such waste is not hazardous or noxious and does not constitute a nuisance, in which case it must be appropriately secured and regularly removed from the construction site;

(2) Reasonable efforts shall be demonstrated to provide for segregation of recyclable construction materials and demolition debris for diversion from landfills; and

(3) Construction waste and demolition debris that may become windblown shall be containerized to prevent litter.

(e) No demolition permit or building permit shall be issued for any development activity subject to this chapter unless the construction and demolition recycling plan has been approved by the City.

(f) The issuance of the certificate of occupancy will be conditional on submittal of a report that documents the construction and demolition debris recycled. The report shall be submitted to the Administrator and shall contain the following information:

(1) The estimated and actual quantities of all construction waste and demolition debris listed in the construction and demolition recycling plan;

(2) Copies of recycling receipts or other pertinent documentation that demonstrates waste diversion and recycling in conformance with the approved construction and demolition recycling plan. Customers shall make reasonable efforts to ensure that all construction and demolition debris diverted for recycling or hauled to landfill are measured and recorded using the most accurate method of measurement available. To the extent practical, all construction and demolition debris shall be

weighed by measurement on scales in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition debris for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, customers shall use the standardized conversion rates approved by the City for this purpose; and

(3) Any additional information the customer believes is relevant to determining its efforts to comply in good faith with this section.

Sec. 6-3.603. Alternative compliance.

As an alternative to the sixty-five percent diversion requirement, a customer may meet the diversion requirements by ensuring that the combined weight of new construction disposal does not exceed 3.4 pounds per square foot of the building area for low-rise residential structures and two pounds per square foot of building area for other structures.

Sec. 6-3.604. Mandatory business recycling.

(a) The following commercial customers shall recycle and divert from the landfill recyclable materials generated by the customer in accordance with this § 6-3.604:

(1) A commercial business that generates four (4) cubic yards or more of solid waste per week;

(2) A multi-family dwelling of five (5) units or more.

(b) Businesses subject to this § 6-3.604 shall arrange for recycling services, from the Collector or anyone holding a valid Commercial Recycler Collection Permit. A customer subject to this § 6-3.604 shall take at least one of the following actions:

(1) Source separate recyclable materials from other solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.

(2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

(c) A customer meeting the conditions of § 6-3.604(a) may request an exemption from the requirements of § 6-3.604(b) by submitting an application on a form prescribed by the Administrator. After reviewing the exemption request, the Administrator shall either approve or disapprove the exemption request. To be eligible for an exemption from requirements of this section, the business must demonstrate that:

(1) There are no recyclable materials being generated by any activities of the customer;

(2) There is inadequate storage space for the storage of recyclable materials;

(3) There is no viable market for the recycling materials or recycling facility available.

Sec. 6-3.605. Mandatory commercial business organics service.

(a) A customer meeting the conditions of § 6-3.604(a)(1) that generates four (4) cubic yards of solid waste per week shall recycle and divert from the landfill organics generated by the customer.

(b) A customer subject to this section shall arrange for organics service from the Collector or anyone holding a valid Commercial Recycler Collection Permit. A customer subject to this section shall take at least one (1) of the following actions:

(1) Source separate organic waste from other solid waste and subscribe to a basic level of organics recycling service that includes collection and recycling of organics.

(2) Recycle its organics onsite or self-haul its own organics for recycling.

(3) Subscribe to an organics service that may include mixed waste processing that specifically recycles organics.

(c) A customer subject to this section may request an exemption from the requirements of § 6-3.605(b) by submitting an application on a form prescribed by the Administrator. After reviewing the exemption request, the Administrator shall either approve or disapprove the exemption request. To be eligible for an exemption from the requirements of § 6-3.605(b), the customer must demonstrate that:

(1) There is less than one half (1/2) of a cubic yard per week of organics being generated by any activities of the customer;

(2) There is inadequate storage space for the storage of organics;

(3) There is no viable market for the organics or organic recycling facility available.

Article 7. Reduction and Reuse Provisions

Sec. 6-3.701 City recycled goods policy.

(a) In procurement of goods for the City, a preference shall be given to purchase recycled goods. Special emphasis shall be placed on the purchase of products manufactured with post-consumer recycled materials. Fitness and quality being equal, the City shall purchase recycled products instead of non-recycled products whenever available at no more than the total cost of non-recycled products. Recycled goods are defined and provided for in such state legislations as the State Agency Buy Recycled Campaign (commencing with Cal. Pub. Con. Code § 12153) and the California Integrated Waste Management Act of 1989 (commencing with Cal. Pub. Res. Code § 40000).

(b) All City departments may, at their option and with purchasing concurrence, require procurement of designated recycled products or recycled products as specified in § 6-3.701(a).

(c) The City shall require its contractors and consultants to use and specify recycled products in fulfilling contractual obligations whenever practicable.

(d) The City shall promote the use of recycled products publicizing its procurement policy whenever practicable.

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: AMENDMENT TO THE AGREEMENT FOR PROCESSING, TRANSFER AND DISPOSAL OF SOLID WASTE

RECOMMENDATION: That the City Council authorize the City Manager to execute an amendment to the agreement (on file with Records Management Department) with USA Waste of California, Inc., a corporation duly formed and operating under the laws of the State of Delaware, a Waste Management Company (Waste Management), for processing, transfer and disposal of solid waste subject to non-substantive changes as mutually agreed to by the parties.

COUNCIL GOALS: Operate in a Businesslike Manner

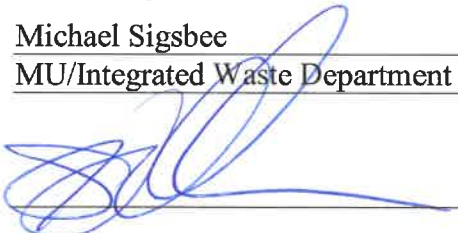
FISCAL IMPACT: The funding for processing, transportation and landfill disposal of the City's refuse is included in the Proposed Fiscal Year 2019-20 Integrated Waste Budget and the anticipated future costs of the proposed amendment will be incorporated into the rate study to be conducted setting future years' billing rates. The proposed amendment with Waste Management for disposal services at the El Sobrante Landfill includes a cumulative 3% reduction to future inflationary cost increases, anticipated to be spread over the first two years of the amendment period, in the form of reductions of 2% in 2020 and 1% in 2021. It is estimated that this inflationary offset will save the City more than \$700,000 in the first three years and potentially more than \$2.8 million over the initial 10-year extension. The proposed amendment also includes an annual disposal credit in the amount of \$60,000, to increase annually based on inflation, to help offset the cost of City facility disposal volumes paid for by the General Fund.

BACKGROUND: The current agreement with Waste Management was approved in 2014 and the first 5-year term expires June 30, 2019. The current agreement includes two 5-year options at the City's discretion that could extend the current terms of the agreement through June 2029. Waste Management and staff have negotiated the proposed amended terms, with City Attorney review, to provide cost savings for the General Fund and the Integrated Waste rate payers over a new longer term that could extend the agreement through 2034. The proposed amendment extends the current term of the agreement through June 30, 2029, and it includes an additional 5-year option at the City's discretion.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Michael Sigsbee
Department: MU/Integrated Waste Department

City Manager
Approval:



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

06/04/2019

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In 2013, the City issued a Request for Qualifications (RFQ) requesting Statements of Qualifications (SOQ) and subsequently issued a Request for Proposals (RFP) for the various elements of solid waste handling, recycling and landfill services that the City requires. Initially, the RFQ was reviewed by 22 potential vendors and the City received three SOQs. Through the subsequent RFP process, City staff evaluated service and cost proposals and conducted interviews in order to determine which prospective vendors could best meet the City's needs. Waste Management was selected to provide landfill services.

The Ontario Municipal Code Section 6-3.105 and Sections 40059 and 49300 of the California Public Resources Code et seq. provide that the City may enter into solid waste handling and recycling service contracts without utilizing the formal bidding process.

Waste Management has provided the City's landfill services since 1999 at the El Sobrante Landfill, located in Corona, California. Under existing agreements, City refuse is delivered to the West Valley Material Recovery Facility from where it is transferred to El Sobrante for landfill. El Sobrante maintains the appropriate permits and has the capacity required to meet the City's current and future projected refuse disposal needs throughout the term of the proposed amendment.

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
CONSENT CALENDAR

SUBJECT: PURCHASE OF WATER METERS AND REPAIR PARTS

RECOMMENDATION: That the City Council approve and authorize the sole source purchase of new water meters and repair parts for a total not to exceed amount of \$2,700,000 from Core & Main of Perris, California.

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

FISCAL IMPACT: The actual cost of meters to be purchased will be determined based on unit pricing for the various sizes of meters and actual meter repair, replacement and new installation needs. If approved, the Proposed Fiscal Year 2019-20 Water Operating and Capital Improvement Program Budgets will include \$2,700,000 for the purchase of new and replacement meters and repair parts. Development projects pay for new meter installations while the cost of meter testing, repair and replacement is included in the rates the City bills for water service. There is no impact to the General Fund.

BACKGROUND: There are over 32,500 water meters citywide, which includes 4,500 meters that serve industrial and commercial businesses as well as landscape areas. Approximately 28,000 meters are used for residential service. The accuracy of meters has a direct relationship to accounting and billing for water service. To maintain accuracy and functionality, meters need to be replaced approximately every ten years, and they are repaired as needed.

In Fiscal Year 2019-20, approximately 3,000 meters are planned to be installed to replace existing meters as part of the ten-year meter replacement program, and about 1,000 new meters are planned to be installed for development projects in the Old Model Colony and Ontario Ranch.

The Master Meter Radio Read Meter was selected as the City standard specification for all new and replacement meter installations as a result of a public bid process and product evaluation that took place

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Don Meyer
Department: MU/Engineering
City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
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Denied: _____

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in 2001, when six different vendors and product lines were evaluated. To maintain consistency with our standardized meters that are already in place throughout the City, the purchase of these new meters can only be made directly through the manufacturer. Section 2-6.11 (b) (2) of the Ontario Municipal Code states that sole source purchases are authorized if there is only one procurement source. Core & Main is the exclusive distributor in California for Master Meter Radio Read Meters; and staff has reviewed pricing and recommends this sole source award to Core & Main.

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
PUBLIC HEARINGS

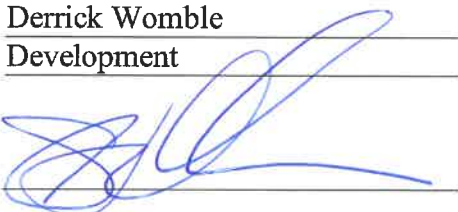
SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT AMENDMENT (THIRD AMENDMENT – FILE NO. PDA05-002) BETWEEN THE CITY OF ONTARIO AND SC ONTARIO DEVELOPMENT COMPANY, LLC, TO REMOVE APPROXIMATELY 2.43 ACRES OF LAND FROM THE DEVELOPMENT AGREEMENT AND CHANGE THE LEGAL DESCRIPTION IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010), FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 9 (MULTI-FAMILY ATTACHED) LAND USE DESIGNATION OF THE PARKSIDE SPECIFIC PLAN (APNs: 0218-231-09, 0218-231-10, 0218-231-11, 0218-231-12, 0218-231-13, 0218-231-14, 0218-231-15, 0218-231-16, 0218-231-17, 0218-231-18, 0218-231-19, 0218-231-20, 0218-231-21, 0218-231-22, 0218-231-30, 0218-231-31, 0218-231-39, 0218-221-06, 0218-221-08, 0218-221-09, AND 0218-221-10)

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving the Third Amendment (File No. PDA05-002 on file with Records Management Department) to the Development Agreement between the City of Ontario and SC Ontario Development Company, LLC, to remove approximately 2.43 acres of land from the Development Agreement and change the legal description in conjunction with the lot line adjustment (File No. LLA18-010).

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

FISCAL IMPACT: The proposed Development Agreement Amendment (“Third Amendment”) does not have an immediate impact on the City’s budget. The Development Agreement provides for the

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

Prepared by: Derrick Womble
Department: Development
City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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formation of a Community Facilities District (CFD) for City facilities and services required to support the Parkside Specific Plan development, thereby mitigating the cost associated with such facilities and services. In addition, the City will continue to collect 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.

BACKGROUND: On August 15, 2006, the City Council approved the Parkside Specific Plan and certified the Environmental Impact Report (EIR) to facilitate the creation of residential neighborhoods, a commercial center, community facilities, and parks. On September 19, 2006, the City Council approved a Development Agreement, File No. PDA05-002 (“Original Agreement”), between the City of Ontario and SC Ontario Development Company, LLC (“Owner”), to provide the funding for additional City services required to support the Specific Plan residential development of up to 1,947 residential units and the infrastructure improvements required to support the related Tract Map No. 18048, a subdivision of 104.13 acres of land into 25 lots approved by the Planning Commission on July 25, 2006.

State law and Section 2.5 of the Original Agreement provide that amendments may be made to the Original Agreement upon the mutual consent of both parties, using the same process and procedures as for the consideration and approval of the Original Agreement. On June 16, 2009, the City Council approved an amendment to the Original Agreement (“First Amendment”) to allow Tract Map No. 18048 to be recorded for the purpose of financing. On February 3, 2015, the City Council approved a second amendment to the Original Agreement (“Second Amendment”), to update the Original Agreement to conform to the current Construction Agreement with NMC Builders, LLC, and to provide for the phasing of the construction of public infrastructure for 250 acres of the Specific Plan. The main points of the Original Agreement continue to address Development Impact Fees (DIF), public service funding, Community Facilities District (CFD) for maintenance of public facilities, park/open space requirements, affordable housing fees, school facilities requirements, and remain in full force.

The proposed Third Amendment continues to apply to the same area as the Original Agreement and updates the legal description of the Original Agreement for the transfer of 2.43 acres of land (Eucalyptus Avenue right-of-way) to the adjacent property owner south of Eucalyptus Avenue, Ontario Land Ventures, LLC (“OLV”).

OLV is required to design, construct, and complete a significant portion of Eucalyptus Avenue as part of their Development Plan (File No. PDEV17-057) and Development Agreement (File No. PDA17-003). OLV has since acquired the right-of-way from the Owner and is proceeding with design drawings. The transfer of the Eucalyptus Avenue right-of-way from Owner to OLV necessitates an update to the legal description associated with the Development Agreement, requiring an amendment (“Third Amendment”) to the Original Agreement (File No. PDA05-002).

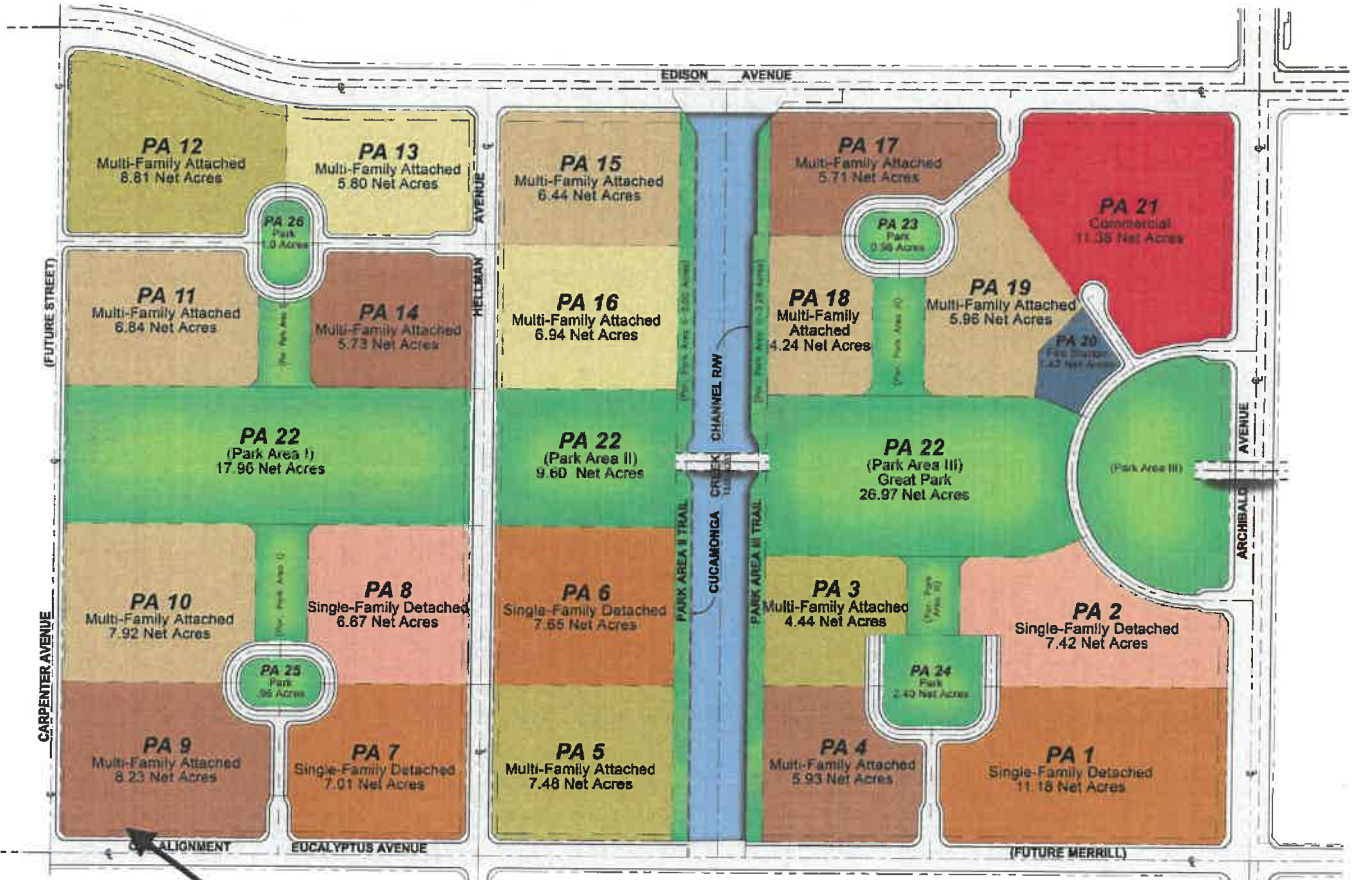
In considering the application at their meeting on April 23, 2019, the Planning Commission found that the Third Amendment was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreement amendments previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC19-025 recommending City Council approval of the First Amendment with a vote of 4-0.

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 area 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 previously analyzed in the West Ontario Commerce Center Specific Plan (File No. PSP16-002) EIR (SCH#2017041074) 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 of the related EIR shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A" Parkside Specific Plan



**PROPERTY
LOCATION**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA05-002, A DEVELOPMENT AGREEMENT AMENDMENT (THIRD AMENDMENT – FILE NO. PDA05-002) BETWEEN THE CITY OF ONTARIO AND SC ONTARIO DEVELOPMENT COMPANY, LLC, TO REMOVE 2.43 ACRES OF LAND FROM THE DEVELOPMENT AGREEMENT AND CHANGE THE LEGAL DESCRIPTION IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010) FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 9 (MULTI-FAMILY ATTACHED) LAND USE DESIGNATION OF THE PARKSIDE SPECIFIC PLAN (APNS: 0218-231-09, 0218-231-10, 0218-231-11, 0218-231-12, 0218-231-13, 0218-231-14, 0218-231-15, 0218-231-16, 0218-231-17, 0218-231-18, 0218-231-19, 0218-231-20, 0218-231-21, 0218-231-22, 0218-231-30, 0218-231-31, 0218-231-39, 0218-221-06, 0218-221-08, 0218-221-09, AND 0218-221-10).

WHEREAS, SC Ontario Development Company, LLC ("Applicant") has filed an Application for the approval of a Development Agreement Amendment (Third Amendment), File No. PDA05-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 40.36 acres of land generally located north of Eucalyptus Avenue, south of Ontario Ranch Road, east of Carpenter Avenue, and west of the Cucamonga Creek Channel, within Planning areas 7 through 10 of the Parkside Specific Plan, previously developed with agriculture and dairy uses and presently vacant; and

WHEREAS, the property to the north of the Project site is within the Medium Density Residential zoning district of the Parkside Specific Plan and is developed with agriculture and dairy uses. The property to the east is within the Utility Corridor zoning district and developed with the Cucamonga Creek Channel. The property to the south is within the Planning Area 1 (Business Park) zoning district of the West Ontario Commerce Center Specific Plan and is developed with agriculture, dairy, and single-family residences. The property to the west is within the NMC West (Mixed Use) zoning district and is developed with agriculture and dairy uses; and

WHEREAS, on September 19, 2006, the City Council adopted Ordinance No. 2841, approving a Development Agreement ("Original Agreement") with SC Ontario Development Company, LLC, to provide the funding for additional City services required to support the Parkside Specific Plan residential development; and

WHEREAS, on June 16, 2009, the City Council adopted Ordinance No. 2909, approving a Development Agreement Amendment ("First Amendment") with SC Ontario Development Company, LLC, to allow Tract Map No. 18048 to be recorded for the purposes of financing; and

WHEREAS, on February 3, 2015, the City Council adopted Ordinance No. 3012, approving a Development Agreement Amendment ("Second Amendment") with SC Ontario Development Company, LLC, to update the agreement to conform with the current Construction Agreement with NMC Builders, LLC, and to provide for the phasing of the construction of public infrastructure for 250 acres of the Parkside Specific Plan; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with File No. PSP16-002, the West Ontario Commerce Center Specific Plan, for which an Environmental Impact Report (SCH#2017041074) was adopted by the City Council on July 3, 2018, and this Application introduces no new significant environmental impacts; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

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

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

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

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

WHEREAS, on April 23, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date, voting to issue Resolution No. PC19-025 recommending the City Council approve the Application; and

WHEREAS, on June 4, 2019, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with File No. PSP16-002, West Ontario Commerce Center Specific Plan for which a Certified EIR was adopted by the City Council on July 3, 2018; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

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

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

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

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

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

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

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

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

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

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

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

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 Third Amendment applies to 2.43 acres of land generally located at the northeast corner of Eucalyptus Avenue and Carpenter Avenue, within Planning Area 9 (Multi-Family Attached) land use designation of the Parkside Specific Plan; and

b. The property to the north of the Project site is within the Parkside Specific Plan, Medium Density Residential zoning district, and is developed with agriculture and dairy uses. The property to the east is within the Utility Corridor zoning district and developed with the Cucamonga Creek Channel. The property to the south is within the Planning Area 1 (Business Park) zoning district of the West Ontario Commerce Center Specific Plan and is developed with agriculture, dairy, and single-family residences. The property to the west is within the NMC West (Mixed Use) zoning district and is developed with agriculture and dairy uses; and

c. The Third Amendment releases 2.43 acres of land from the Development Agreement, changes the legal description in conjunction with the lot line adjustment (File No. LLA18-010) and sale of the Eucalyptus Avenue right-of-way to Ontario Land Ventures, LLC; and

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

e. The Third Amendment 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

f. This Third Amendment will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) that was adopted by the City Council on July 3, 2018. This application introduces no new significant environmental impacts; and

g. 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.* The findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Agreement Amendment (Third Amendment), attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2019.

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 _____, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA05-002

Third Amendment to the Development Agreement

By and Between the

City of Ontario, a California municipal corporation,

and

**SC Ontario Development Company, LLC
a Delaware limited liability company**

(Document follows this page)

**RECORD AT THE REQUEST OF AND
WHEN RECORDED, PLEASE RETURN TO:**

CITY OF ONTARIO
303 East "B" Street
Ontario, California 91764
Attn: City Clerk

(Fee Exempt – Government Code 6103)

SPACE ABOVE FOR RECORDER'S USE ONLY

File No. PDA05-002

Third Amendment to the Development Agreement

By and Between

City of Ontario, a California municipal corporation,

and

**SC Ontario Development Company, LLC
a Delaware limited liability company**

_____, 2019

San Bernardino County, California

**THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ONTARIO AND
SC ONTARIO DEVELOPMENT COMPANY, LLC
FILE NO. PDA05-002**

THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (the "**Third Amendment**") is entered into as of _____, 2019 by and between the CITY OF ONTARIO, a California municipal corporation (hereinafter "**CITY**") and SC ONTARIO DEVELOPMENT COMPANY, LLC, a Delaware limited liability company (hereinafter "**OWNER**").

RECITALS

WHEREAS, the CITY and OWNER entered into that certain (i) Development Agreement dated September 19, 2006, and recorded on November 14, 2006 in the Official Records of the County of San Bernardino as Document No. 2006-0774531 (the "**Original Agreement**"), as amended by (ii) that First Amendment to Development Agreement dated June 16, 2009, and recorded on September 14, 2009 as Document No. 2009-0403692 (the "**First Amendment**"), and (iii) that Second Amendment to Development Agreement dated April 4, 2017, and recorded on May 15, 2017 as Document No. 2017-0199310 (the "**Second Amendment**") all with respect to the real property described in Exhibit "A" to this Agreement.

A. The CITY and OWNER now intend to amend the Original Agreement, as amended by the First Amendment and by the Second Amendment (collectively the "**Agreement**"), as set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

1.1. **Definitions.** Unless the context otherwise requires, all capitalized terms in this Third Amendment not expressly defined in this Third Amendment shall have the meaning given that term in the Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Third Amendment, and the word "herein," "hereof," "hereunder" and other words of similar import refer to this Third Amendment as a whole and not to any particular Article, Section or subdivision hereof.

**ARTICLE II
AMENDMENTS**

2.1. **Deletion of Property.** OWNER is conveying the fee interest in that certain 2.43 acre real property described in **Exhibit "A"** and shown on **Exhibit "B"** attached hereto (the "**LLA 18-010 Property**") by that certain Certificate Approving a Lot Line Adjustment 18-010 (the "**LLA 18-010**") between OWNER and adjacent land owner Ontario Land Ventures, LLC, a Delaware limited

liability company (“**OLV**”). Upon recordation of LLA 18-010 and conveyance of fee simple title to the LLA 18-010 Property by OWNER to OLV by recordation of a grant deed, the LLA 18-010 Parcel shall be deemed removed from the Property (as that term is defined in the Agreement) and shall cease to be subject to the terms of the Agreement.

**ARTICLE III
MISCELLANEOUS PROVISIONS**

3.1 **Counterparts.** This Third Amendment may be executed in counterparts, each of which shall be deemed an original.

[Signature Page Follows]

SIGNATURE PAGE
TO THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

CITY:

CITY OF ONTARIO,
a California municipal corporation

By: _____
Name: Scott Ochoa
Title: City Manager

OWNERS:

SC ONTARIO DEVELOPMENT COMPANY, LLC
a Delaware limited liability company

By: **LEWIS MANAGEMENT CORP.,**
a Delaware corporation – Its Sole Manager

By: _____
Name: **Bryan T. Goodman**
Title: **Authorized Agent**

ATTEST:

By: _____
Name: _____
Title: **City Clerk**

APPROVED AS TO FORM:

BEST, BEST & KRIEGER, LLP

By: _____
Name: _____
Title: **City Attorney**

EXHIBIT "A"
LEGAL DESCRIPTION OF LLA 18-010 PROPERTY

EXHIBIT "A"

SHEET 1 OF 1

GRANT DEED FOR LLA18-010

SC ONTARIO DEVELOPMENT TO ONTARIO LAND VENTURES

THAT PORTION OF GOVERNMENT LOT 4, SECTION 15, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF, APPROVED BY THE SURVEYOR GENERAL ON AUGUST 30, 1873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 AS SHOWN ON RECORD OF SURVEY 02-139, RECORDED IN BOOK 118, PAGES 82 THROUGH 95 INCLUSIVE OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID CORNER BEING ON THE CENTERLINE OF CARPENTER AVENUE AS SHOWN ON SAID RECORD OF SURVEY, SAID CORNER ALSO BEING ON THE EAST LINE OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE ALONG SAID CENTERLINE AS SHOWN ON RECORD OF SURVEY, RECORDED IN BOOK 25, PAGE 15 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, NORTH 00° 02' 44" WEST, 187.76 FEET TO THE CENTERLINE OF EUCALYPTUS AVENUE, AS SHOWN ON LAST MENTIONED RECORD OF SURVEY;

THENCE ALONG THE EASTERLY PROLONGATION OF SAID CENTERLINE OF EUCALYPTUS AVENUE, NORTH 89° 19' 34" EAST, 144.43 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 905.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 27° 08' 53" AN ARC LENGTH OF 428.81 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 905.00 FEET, A RADIAL LINE TO SAID BEGINNING OF TANGENT REVERSE CURVE BEARS SOUTH 26° 28' 27" WEST;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 26° 27' 26" AN ARC LENGTH OF 417.90 FEET TO A POINT OF TANGENCY WITH THE NORTHERLY LINE OF SAID GOVERNMENT LOT 1, A RADIAL LINE TO SAID POINT OF TANGENCY BEARS SOUTH 00° 01' 02" WEST;

THENCE ALONG SAID NORTHERLY LINE OF GOVERNMENT LOT 1, NORTH 89° 58' 58" WEST, 961.54 FEET TO THE POINT OF BEGINNING.

CONTAINING: 105,724 SQUARE FEET OR 2.43 ACRES MORE OR LESS (GROSS)

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO: COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND RIGHTS-OF-WAY, IF ANY.

SURVEYOR:

PREPARED UNDER THE SUPERVISION OF:

Last Update: 12/04/18
O:\3280\LLA\GRANT DEED\3280_DEED.dwg

PREPARED BY:

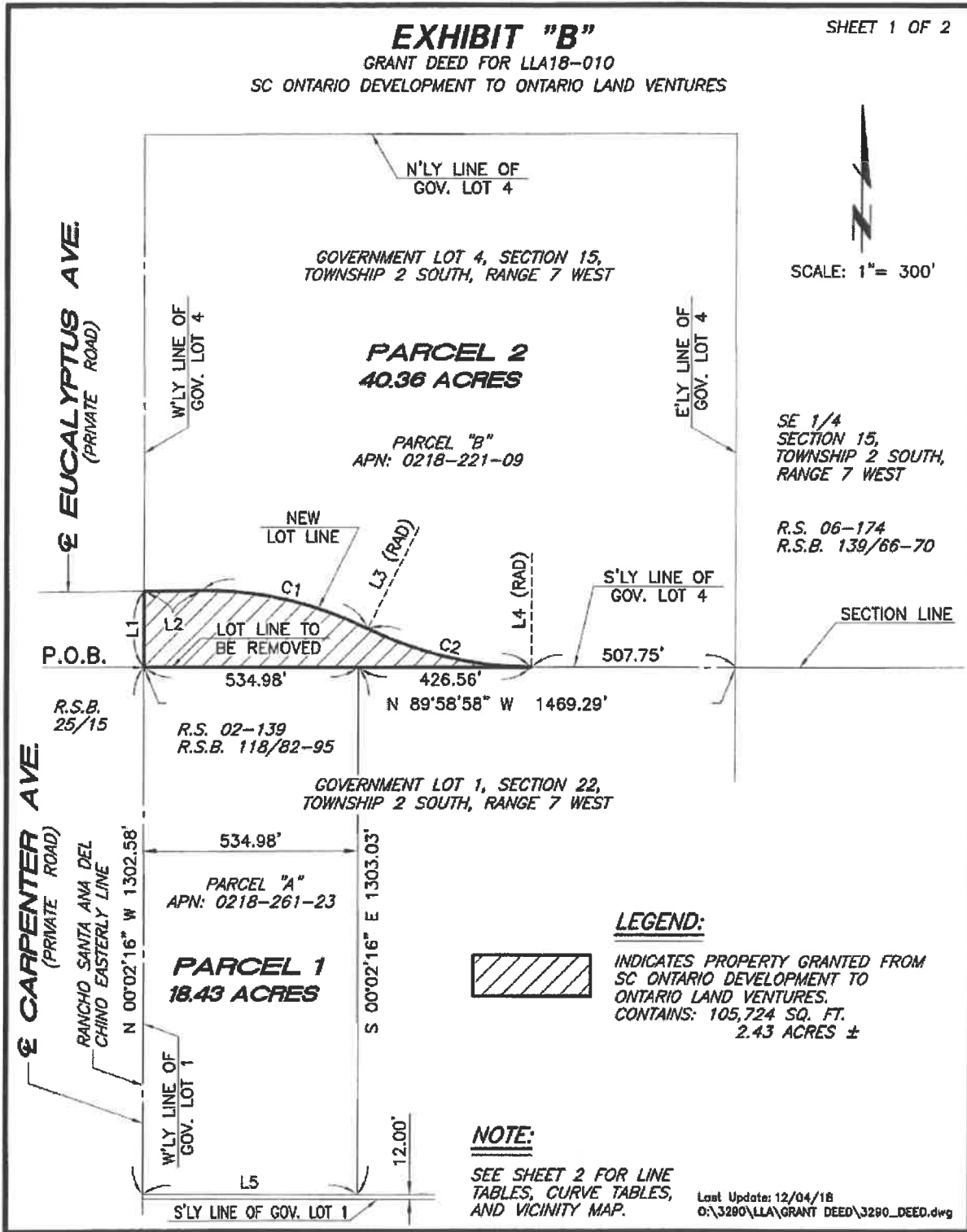
Thienes Engineering, Inc.
CIVIL ENGINEERING • LAND SURVEYING
14349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH: (714) 521-4811 FAX: (714) 521-4173

BRIAN L. THIENES
P.L.S. NO. 5750
REG. EXP. DEC. 31, 2019

DATE



EXHIBIT "B"
DEPICTION OF LLA 18-010 PROPERTY



CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
PUBLIC HEARINGS

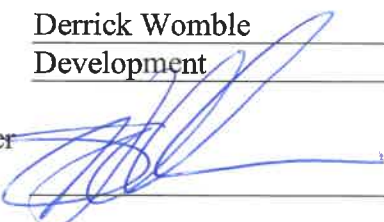
SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT AMENDMENT (FIRST AMENDMENT FILE NO. PDA17-003) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, FOR THE ACQUISITION OF 2.43 ACRES OF LAND AND CHANGE THE LEGAL DESCRIPTION FOR TENTATIVE PARCEL MAP NO. 19738 (FILE NO. PMTT17-011) IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010) FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 1 (BUSINESS PARK) LAND USE DESIGNATION OF THE WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN (APNS: 0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13, 0218-271-18, 0218-221-09)

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving the First Amendment (File No. PDA17-003 on file with Records Management Department) to the Development Agreement between the City of Ontario and Ontario Land Ventures, LLC, for the acquisition of 2.43 acres of land and change to the legal description for Tentative Parcel Map No. 19738 (PMTT17-011) in conjunction with the lot line adjustment (File No. LLA18-010).

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

FISCAL IMPACT: The proposed Development Agreement Amendment ("First Amendment") does not have an immediate impact on the City's budget. The Development Agreement provides for the formation of a Community Facilities District (CFD) for City facilities and services required to support the West Ontario Commerce Center Specific Plan development, thereby mitigating the cost associated with such facilities and services. In addition, the City will continue to collect public service funding

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

Prepared by: Derrick Womble
Department: Development
City Manager Approval: 

Submitted to Council/O.H.A. 06/14/2019
Approved: _____
Continued to: _____
Denied: _____

12

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

BACKGROUND: On July 3, 2018, the City Council approved the West Ontario Commerce Center Specific Plan, File No. PSP16-002 (“Specific Plan”) and certified the Environmental Impact Report (EIR) for the Specific Plan. 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.

On September 4, 2018, the City Council approved a Development Agreement, File No. PDA17-003 (“Original Agreement”) with Ontario Land Ventures, LLC (“Owner”) for Tentative Parcel Map No. 19738 (File No. PMTT17-011) 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.

State law and Section 2.5 of the Original Agreement provide that amendments may be made to the Original Agreement upon the mutual consent of both parties, using the same process and procedures as was used for the consideration and approval of the Original Agreement. The main points of the Original Agreement continue to address Development Impact Fees (DIF), public service funding, Community Facilities District (CFD) for maintenance of public facilities, park/open space requirements, affordable housing fees, school facilities requirements, and remain in full force and effect.

The proposed First Amendment continues to apply to the same area as the Original Agreement and updates the legal description of the Original Agreement for the inclusion of approximately 2.43 acres of land (Eucalyptus Avenue right-of-way), transferred from the adjacent property owner to the north, SC Ontario Development Company, LLC. The Owner is required to design, construct, and complete a significant portion of Eucalyptus Avenue in conjunction with their Development Plan (File No. PDEV17-057) and Original Agreement (File No. PDA17-003). Therefore, SC Ontario Development Company, LLC, sold the Eucalyptus Avenue right-of-way to the Owner in order to facilitate its future development.

The Owner has received approval from the City for a lot line adjustment (File No. LLA18-010) which, upon of the approval of the Lot Line Adjustment, shall be added to the Owner’s property and, with approval of the Amendment, will be subject to the terms and conditions of the Original Agreement.

In considering the application at their meeting on April 23, 2019, the Planning Commission found that the First Amendment was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreement amendments previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC19-026 recommending City Council approval of the First Amendment with a vote of 4-0.

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 Ontario International Airport Land Use

Compatibility Plan. 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 previously reviewed in conjunction with West Ontario Commerce Center Specific Plan (File No. PSP16-002), for which an EIR (SCH#2017041074), was adopted by the City Council on July 3, 2018. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

EXHIBIT "A"

West Ontario Commerce Center Specific Plan

Development Plan

FIGURE 3.1: LAND USE PLAN

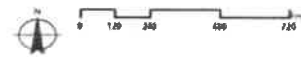


Legend

-  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: AIG, Inc.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA17-003, A DEVELOPMENT AGREEMENT AMENDMENT (FIRST AMENDMENT) BETWEEN THE CITY OF ONTARIO AND ONTARIO LAND VENTURES, LLC, FOR THE ACQUISITION OF 2.43 ACRES OF LAND AND CHANGE THE LEGAL DESCRIPTION FOR TENTATIVE PARCEL MAP NO. 19738 (FILE NO. PMTT17-011) IN CONJUNCTION WITH THE LOT LINE ADJUSTMENT (FILE NO. LLA18-010) FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF EUCALYPTUS AVENUE AND CARPENTER AVENUE, WITHIN PLANNING AREA 1 (BUSINESS PARK) LAND USE DESIGNATION OF THE WEST ONTARIO COMMERCE CENTER SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: (0218-261-16, 0218-261-22, 0218-261-23, 0218-261-32, 0218-271-04, 0218-271-08, 0218-271-10, 0218-271-13, 0218-271-18, 0218-221-09).

WHEREAS, Ontario Land Ventures, LLC ("Applicant") has filed an Application for the approval of a Development Agreement Amendment (First Amendment), File No. PDA17-003, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 119.31 acres of land generally located north of Merrill Avenue, south of Eucalyptus Avenue, east of Carpenter Avenue, and west of the Cucamonga Creek Channel, within Planning Area 1 (Business Park) and Planning Area 2 (General Industrial) land use zoning designations of the West Ontario Commerce Center Specific Plan and is presently developed with agricultural, dairy, and single-family residential uses; and

WHEREAS, the property to the north of the Project site is within the Parkside Specific Plan, 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 Channel. The property to the south is within the Colony Commerce Center West Specific Plan, 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

WHEREAS, on September 4, 2018, the City Council of the City of Ontario, adopted Ordinance No. 3115, approving a Development Agreement (File No. PDA17-003), between Ontario Land Ventures, LLC and the City; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with File No. PSP16-002, the West Ontario Commerce Center Specific Plan for which an Environmental Impact Report (EIR) was certified by the City Council on July 3, 2018, and this Application introduces no new significant environmental impacts; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

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

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

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

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

WHEREAS, on April 23, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date, voting to issue Resolution No. PC19-026 recommending the City Council approve the Application; and

WHEREAS, on June 4, 2019, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with File No. PSP16-002, the West Ontario Commerce Center Specific Plan for which a Certified EIR was adopted by the City Council on July 3, 2018.

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

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

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

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

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

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

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

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

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

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

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

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

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 First Amendment applies to 2.43 acres of land generally located at the northeast corner of Eucalyptus Avenue and Carpenter Avenue, within the Business Park (Planning Area 1) land use designation of the West Ontario Commerce Center Specific Plan; and

b. The property is located south Eucalyptus Avenue, north of Merrill Avenue, east of Carpenter Avenue, and west of the Cucamonga Creek Channel, within the Business Park (Planning Area 1) and General Industrial (Planning Area 2) land use designation 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; and

c. The First Amendment adds 2.43 acres of land to the Original Development Agreement and changes the legal description in conjunction with the lot line adjustment (File No. LLA18-010) and purchase of the Eucalyptus Avenue right-of-way, from SC Ontario Development Company, LLC.

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

e. The First Amendment 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

f. This First Amendment will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the West Ontario Commerce Center Specific Plan EIR (SCH#2017041074) that was adopted by the City Council on July 3, 2018. This application introduces no new significant environmental impacts; and

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

SECTION 6. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Agreement Amendment (First Amendment), attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

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

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

PASSED; APPROVED, AND ADOPTED this ____ day of _____ 2019.

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 _____, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA17-003

First Amendment to the Development Agreement

By and Between

City of Ontario, a California municipal corporation,

and

**Ontario Land Ventures, LLC
a Delaware limited liability company**

(Document follows this page)

RECORD AT THE REQUEST OF AND
WHEN RECORDED, PLEASE RETURN TO:

CITY OF ONTARIO
303 East "B" Street
Ontario, California 91764
Attn: City Clerk

(Fee Exempt – Government Code 6103)

SPACE ABOVE FOR RECORDER'S USE ONLY

File No. PDA17-003

First Amendment to the Development Agreement

By and Between

The City of Ontario, a California municipal corporation

and

**Ontario Land Ventures, LLC
a Delaware limited liability company**

_____, 2019

San Bernardino County, California

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ONTARIO AND
ONTARIO LAND VENTURES, LLC
FILE NO. PDA17-003**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. PDA17-003 (the "**First Amendment**") is entered into as of _____, 2019 by and between the CITY OF ONTARIO, a California municipal corporation (hereinafter "**CITY**") and ONTARIO LAND VENTURES, LLC, a Delaware limited liability company (hereinafter "**OWNER**").

RECITALS

WHEREAS, the CITY and OWNER entered into that certain Development Agreement dated September 4, 2018, and recorded on December 18, 2018 in the Official Records of the County of San Bernardino as Document No. 2018-0466825 (the "**Original Agreement**"), and with respect to the real property described in Exhibit "A" to this Agreement.

A. The CITY and OWNER now intend to amend the Original Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I
DEFINITIONS**

1.1. **Definitions.** Unless the context otherwise requires, all capitalized terms in this First Amendment not expressly defined in this First Amendment shall have the meaning given that term in the Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this First Amendment, and the word "herein," "hereof," "hereunder" and other words of similar import refer to this First Amendment as a whole and not to any particular Article, Section or subdivision hereof.

**ARTICLE II
AMENDMENTS**

2.1. **Addition of Property.** OWNER is receiving the fee interest in that certain 2.43 acre real property described in **Exhibit "1"** and shown on **Exhibit "2"** attached hereto (the "**LLA 18-010 Property**") by that certain Certificate Approving a Lot Line Adjustment 18-010 (the "**LLA 18-010**") between OWNER and adjacent land owner SC Ontario Development Company, LLC, a Delaware limited liability company ("**SC Ontario**"). Upon recordation of LLA 18-010 and conveyance of fee simple title to the LLA 18-010 Property by SC Ontario to OWNER by recordation of a grant deed, the LLA 18-010 Parcel shall be deemed added to the Property (as that term is defined in the Agreement) and shall then be subject to the terms of the Agreement.

**ARTICLE III
MISCELLANEOUS PROVISIONS**

3.1 **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original.

[Signature Page Follows]

SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

CITY:

CITY OF ONTARIO,
a California municipal corporation

By: _____
Name: Scott Ochoa
Title: City Manager

OWNER:

ONTARIO LAND VENTURES, LLC
a Delaware limited liability company

By: _____
Name: Carl W. Goltermann, Authorized Agent

ATTEST:

By: _____
Name: _____
Title: City Clerk

APPROVED AS TO FORM:

BEST, BEST & KRIEGER, LLP

By: _____
Name: _____
Title: City Attorney

ACKNOWLEDGMENT

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

State of California)
County of San Bernardino)

On _____, 2019 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.

Signature _____

[SEAL]

ACKNOWLEDGMENT

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

State of California)
County of San Bernardino)

On _____, 2019 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.

Signature _____

[SEAL]

EXHIBIT "A"
LEGAL DESCRIPTION OF LLA 18-010 PROPERTY

EXHIBIT "A"

SHEET 1 OF 1

GRANT DEED FOR LLA18-010
SC ONTARIO DEVELOPMENT TO ONTARIO LAND VENTURES

THAT PORTION OF GOVERNMENT LOT 4, SECTION 15, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF, APPROVED BY THE SURVEYOR GENERAL ON AUGUST 30, 1873, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 AS SHOWN ON RECORD OF SURVEY 02-139, RECORDED IN BOOK 118, PAGES 82 THROUGH 95 INCLUSIVE OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID CORNER BEING ON THE CENTERLINE OF CARPENTER AVENUE AS SHOWN ON SAID RECORD OF SURVEY, SAID CORNER ALSO BEING ON THE EAST LINE OF RANCHO SANTA ANA DEL CHINO, AS PER MAP RECORDED IN BOOK 6, PAGE 15 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE ALONG SAID CENTERLINE AS SHOWN ON RECORD OF SURVEY, RECORDED IN BOOK 25, PAGE 15 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, NORTH 00° 02' 44" WEST, 187.76 FEET TO THE CENTERLINE OF EUCALYPTUS AVENUE, AS SHOWN ON LAST MENTIONED RECORD OF SURVEY;

THENCE ALONG THE EASTERLY PROLONGATION OF SAID CENTERLINE OF EUCALYPTUS AVENUE, NORTH 89° 19' 34" EAST, 144.43 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 905.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 27° 08' 53" AN ARC LENGTH OF 428.81 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 905.00 FEET, A RADIAL LINE TO SAID BEGINNING OF TANGENT REVERSE CURVE BEARS SOUTH 26° 28' 27" WEST;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 26° 27' 26" AN ARC LENGTH OF 417.90 FEET TO A POINT OF TANGENCY WITH THE NORTHERLY LINE OF SAID GOVERNMENT LOT 1, A RADIAL LINE TO SAID POINT OF TANGENCY BEARS SOUTH 00° 01' 02" WEST;

THENCE ALONG SAID NORTHERLY LINE OF GOVERNMENT LOT 1, NORTH 89° 58' 58" WEST, 961.54 FEET TO THE POINT OF BEGINNING.

CONTAINING: 105,724 SQUARE FEET OR 2.43 ACRES MORE OR LESS (GROSS)

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO: COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND RIGHTS-OF-WAY, IF ANY.

SURVEYOR:

PREPARED UNDER THE SUPERVISION OF:

Last Update: 12/04/18
O:\3290\LLA\GRANT DEED\3290_DEED.dwg

PREPARED BY:

Thienes Engineering, Inc.
CIVIL ENGINEERING • LAND SURVEYING
14349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH. (714) 521-4811 FAX (714) 521-4173

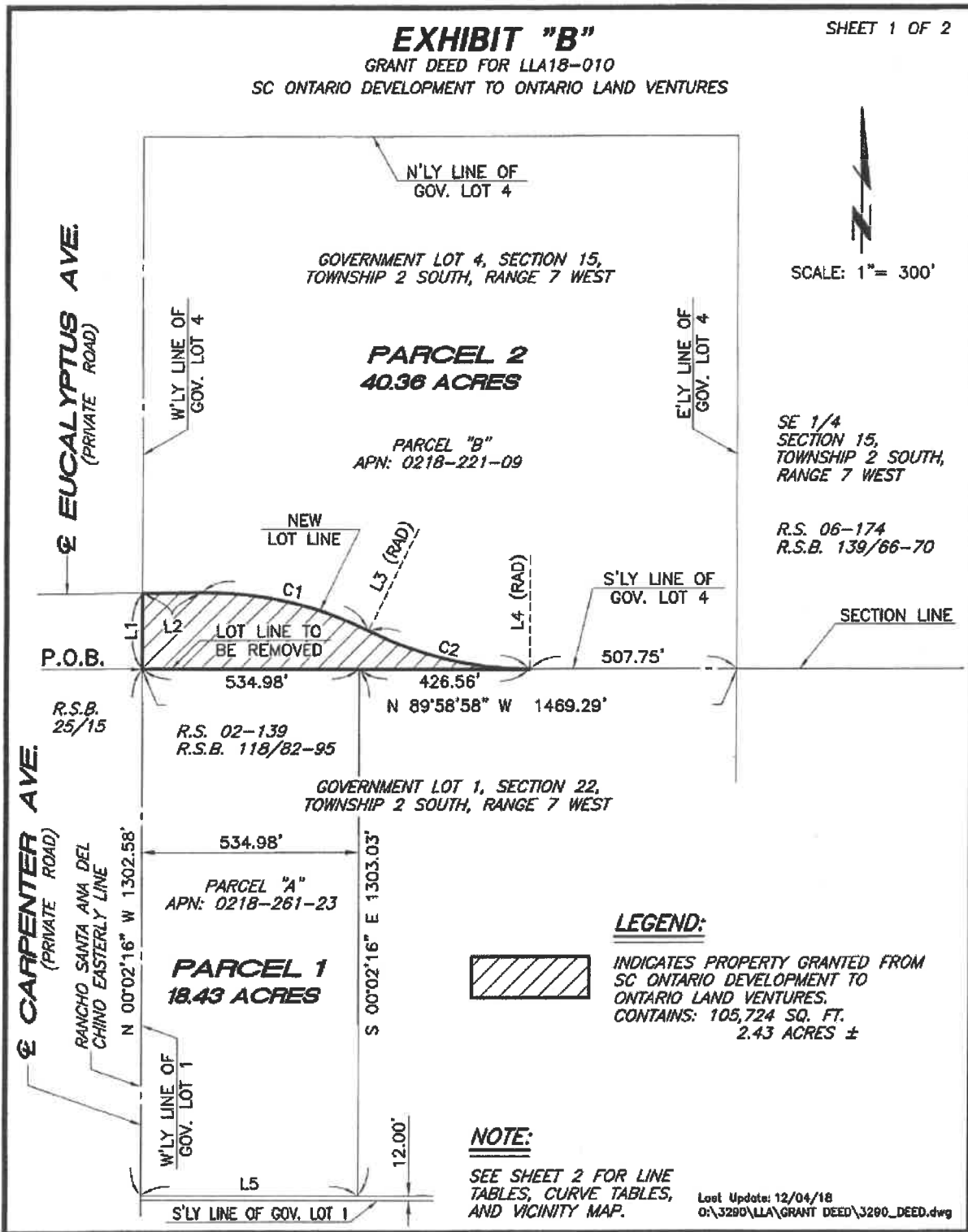
BRIAN L. THIENES _____ DATE _____
P.L.S. NO. 5750
REG. EXP. DEC. 31, 2019



EXHIBIT "B"
DEPICTION OF LLA 18-010 PROPERTY

SHEET 1 OF 2

EXHIBIT "B"
 GRANT DEED FOR LLA18-010
 SC ONTARIO DEVELOPMENT TO ONTARIO LAND VENTURES



CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
PUBLIC HEARINGS

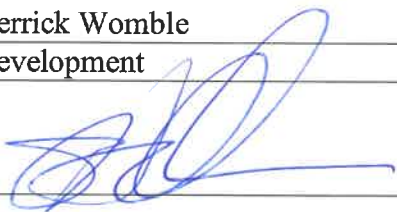
SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA18-005) BETWEEN THE CITY OF ONTARIO AND HAVEN ONTARIO NMC 1, LLC, AND HAVEN ONTARIO NMC 2, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP NO. 20134 (FILE NO. PMTT17-013), FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAVEN AND SCHAEFER AVENUES WITHIN PLANNING AREAS 5A, 5B, 5C, 5D, AND 5E (RESIDENTIAL – SMALL LOT SFD/SCE EASEMENT) LAND USE DESIGNATIONS OF THE RICH-HAVEN SPECIFIC PLAN (APN: 0218-161-01)

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA18-005 on file with Records Management Department) between the City of Ontario and Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, LLC, to establish the terms and conditions for the development of Tentative Tract Map No. 20134 (File No. PMTT17-013).

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 the formation of a Community Facilities District (CFD) for City services and facilities 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: Derrick Womble
Department: Development
City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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BACKGROUND: On December 4, 2007, the City Council adopted the Rich-Haven Specific Plan, File No. PSP05-004 (“Specific Plan”) and certified the Environmental Impact Report (EIR) for the Specific Plan. The Specific Plan establishes the land use designations, development standards, design guidelines and infrastructure improvements for 584.2 acres of land, which includes the potential development of 7,194 dwelling units and 1,131,702 square feet of commercial/office uses.

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, Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, LLC (“Owners”), have requested that the City enter into negotiations to create a Development Agreement.

In accordance with California Government Code Section 65865, which in part states that “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...” and California Government Code Section 65865.52, which in part states that “a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property... and may include conditions, terms, restrictions...,” the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements. Furthermore, the Financing and Construction Agreement with the NMC Builders, LLC (“NMC Builders”), requires those developments wishing to use the infrastructure it created to enter into Development Agreements with the City of Ontario. Pursuant to these procedures and requirements, staff entered into negotiations with the Owners to create a Development Agreement for consideration by the Planning Commission and City Council.

The proposed Development Agreement is based upon the model Development Agreement developed in coordination with the City Attorney and legal counsel for NMC Builders. This model Development Agreement is consistent with the provisions of the Construction Agreement. The terms of the agreement between NMC Builders’ members requires that members of the LLC enter into Development Agreements that are consistent with the provisions of the Construction Agreement.

The Development Agreement proposes to include 80.61 acres of land within Planning Areas 5A, 5B, 5C, 5D, and 5E (Residential – Small Lot SFD/SCE Easement) land use designations of the Specific Plan, as shown on the attached Exhibit “A”. The Development Agreement grants the Owners a vested right to develop Tentative Tract Map No. 20134 as long as the Owners comply with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map No. 20134 (see Exhibit “B”) is on the northeast corner of Haven and Schaefer Avenues and proposes to subdivide approximately 80.61 acres of land into 15 numbered lots and 15 lettered lots for residential and public/private streets, landscape neighborhood edges, and common open space purposes.

The term of the Development Agreement is for ten years, with a five-year option to extend. 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, 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 (CFD) for reimbursement of public improvements; and maintenance of public facilities.

In considering the application at their meeting on April 23, 2019, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, and the City’s Development Agreement policies, previously approved for Ontario Ranch developments. As a result, the

Planning Commission adopted Resolution No. PC19-024 recommending City Council approval of the Development Agreement with a vote of 4-0.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (678) and density (11.8) specified in 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, and has been found to be consistent with the policies and criteria set forth within the Ontario International Airport Land Use Compatibility Plan.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with an addendum to the Rich-Haven Specific Plan EIR (SCH# 2006051081) File No. PSP05-004, which was adopted by the City Council on February 20, 2018. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

EXHIBIT "A"

Rich-Haven Specific Plan Land Use Map

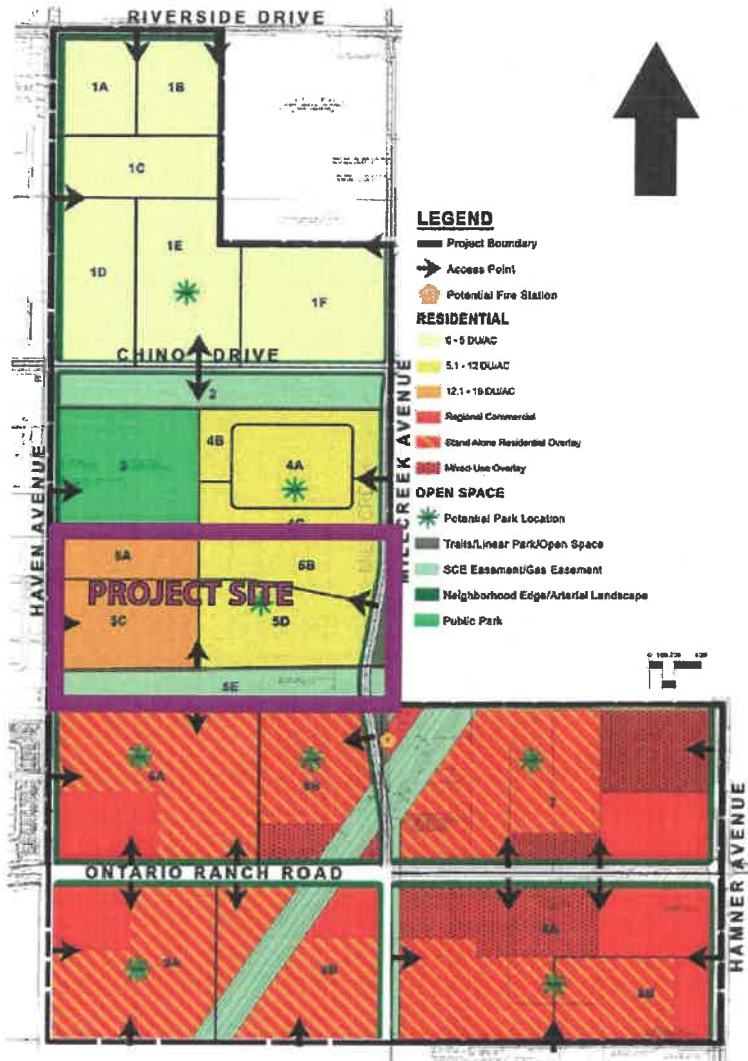
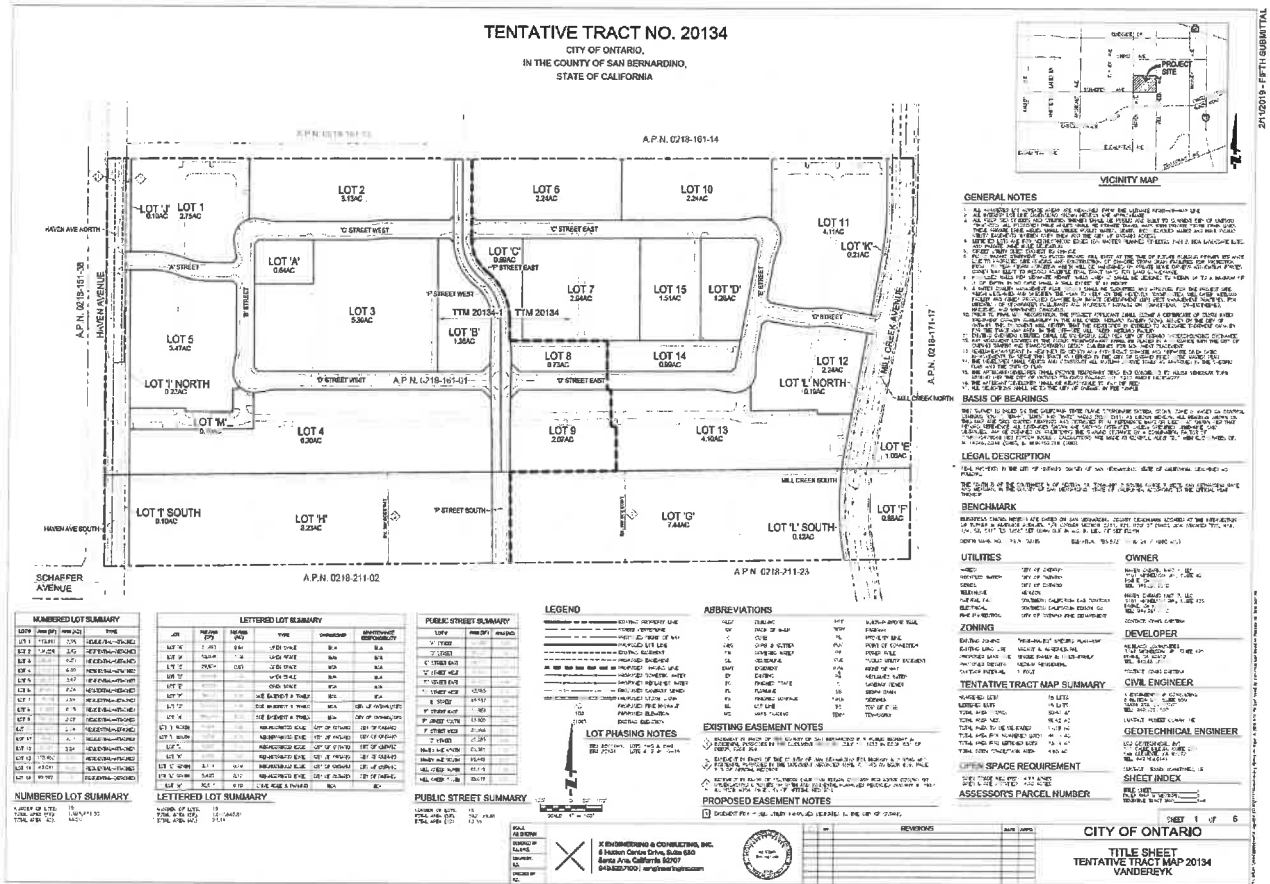


EXHIBIT "B"

Tentative Tract Map No. 20134



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA18-005, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND HAVEN ONTARIO NMC 1, LLC AND HAVEN ONTARIO NMC 2, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP NO. 20134 (FILE NO. PMTT17-013), FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAVEN AND SCHAEFER AVENUES WITHIN PLANNING AREA 5A, 5B, 5C, 5D, AND 5E (RESIDENTIAL -SMALL LOT SFD/SCE EASEMENT) LAND USE DESIGNATIONS OF THE RICH-HAVEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-161-01.

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 (File No. PDA18-005) between the City of Ontario and Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, LLC, to establish the terms and conditions for the development of Tentative Tract Map No. 20134 (File No. PMTT17-013) located at the northeast corner of Haven and Schaefer Avenues within Planning Areas 5A, 5B, 5C, 5D, and 5E (Residential – Small Lot SFD/SCE Easement) land use designations 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 Specific Plan EIR (SCH#2006051081) 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 adopted Resolution No. 2007-145 certifying the Rich-Haven Specific Plan EIR (SCH#2006051081), and issued Ordinance 2884 approving the Rich-Haven Specific Plan (File No. PSP05-004); and

WHEREAS, a Tentative Tract Map No. 20134 (File No. PMTT17-013) to subdivide approximately 80.61 acres of land into 15 numbered lots and 15 lettered lots has been submitted in conjunction with the subject Development Agreement application; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with an addendum to the Rich-Haven Specific Plan EIR (SCH# 2006051081) certified by the City Council on February 20, 2018. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City’s “Guidelines for the Implementation of the California Environmental Quality Act (CEQA)” provide for the use of a single environmental

assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

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

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

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

WHEREAS, on April 23, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC19-024 recommending the City Council approve the Application; and

WHEREAS, on June 4, 2019, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

SECTION 1. Environmental Determination and Findings. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with File No. PSP05-004, an addendum to the Rich-Haven Specific Plan for which a Certified EIR was adopted by the City Council on February 20, 2018.

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

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

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

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

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

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

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

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

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

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

SECTION 3. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of project implementation, the project is consistent with the Housing Element of

the Policy Plan (General Plan) component of The Ontario Plan. The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is 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, and the proposed project is consistent with the number of dwelling units (678) and density (11.8) specified in 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 80.61 acres of land, for property bounded by Chino Avenue to the north, Ontario Ranch Road to the south, Mill Creek Avenue to the east, and Haven Avenue to the west, located within Planning Areas 5A, 5B, 5C, 5D, and 5E (Residential – Small Lot SFD/SCE Easement) land use designations of the Rich-Haven Specific Plan, and is presently vacant and was previously used for agriculture and dairy uses; and

b. The property to the north of the Project site is within Planning Areas 4C (Small Lot SFD) and 3 (Park) of the Rich Haven Specific Plan, and is presently vacant. The property to the east is within the Specific Plan (Agricultural Overlay) zoning district, and is developed with an SCE Substation. The property to the south is within the Mixed Use District Planning Areas 6A and 6B of the Rich Haven Specific Plan, and is presently mass graded and vacant. The property to the west is within Planning Area 8 – Residential (4,250 SF Lots) of the West Haven Specific Plan, and is developed with residential subdivision; and

c. The Development Agreement establishes parameters for the development of Planning Areas 5A, 5B, 5C, 5D and 5E (Residential – Small Lot SFD/SCE Easement) of the Rich-Haven Specific Plan, for residential and public/private streets, landscape neighborhood edges and common open space purposes. The Development Agreement also grants Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, 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 proposes to include approximately 80.61 acres of land within Planning Areas 5A, 5B, 5C, 5D and 5E (Residential – Small Lot SFD/SCE Easement land use designations) of the Rich-Haven Specific Plan; and

e. The Agreement grants Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, LLC, a vested right to develop Tentative Tract Map No. 20134 as long as Haven Ontario NMC 1, LLC, and Haven Ontario NMC 2, LLC, comply with the terms and conditions of the Rich-Haven Specific Plan and EIR. Tentative Tract Map No. 20134 is located at the northeast corner of Haven and Schaefer Avenues and proposes to subdivide approximately 80.61 acres of land into 15 numbered lots and 15 lettered lots for residential and public/private streets, landscape neighborhood edges, and common open space purposes; 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 Policy (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 not be materially injurious or detrimental to the adjacent properties and will not 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 EIR (SCH#2006051081) prepared for the Rich-Haven Specific Plan (File No. PSP05-004) and certified by the City Council on February 20, 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 Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Agreement, attached hereto as “Attachment A,” and incorporated herein by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2019.

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 _____, 2019 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA18-005

Development Agreement

By and Between

City of Ontario, a California municipal corporation,

and

Haven Ontario NMC 1, LLC, a Florida limited liability company

and

Haven Ontario NMC 2, LLC, a Florida limited liability company

(Document follows this page)

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

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

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

File No. PDA18-005

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

Haven Ontario NMC 1, LLC, a Florida limited liability company

and

Haven Ontario NMC 2, LLC, a Florida limited liability company

_____, 2019

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. 18-005

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2019 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Haven Ontario NMC 1, LLC, a Florida limited liability company and Haven Ontario NMC 2, LLC, a Florida limited liability company as tenants in common (hereinafter "OWNER"):

RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Rich-Haven Specific Plan (State Clearinghouse No. 2006051081 (the "FEIR") was certified by the City Council of the City of Ontario on December 4, 2007. The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the 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 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."

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. 20134 as further described in Exhibits “F-1A” through “F-4” (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 "Model Units" means a maximum of forty-four (44) model units, with a maximum of twenty-two (22) in each Phase, 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 for the respective Phase.

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

1.1.19 "Phase 1 Units" means approximately three-hundred eighty-two (382) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 1 Area for which the CITY issues building permits to OWNER and shall include up to twenty-two (22) Model Units and such units are served by the Phase 1 Improvements.

1.1.20 "Phase 2 Improvements" means the public infrastructure and improvements that shall be designed, or designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY's issuance of the first building permit for Phase 2 Units and as shown in Exhibit F – Phase 2 Improvements."

1.1.22 "Phase 2 Units" means approximately two-hundred ninety-six (296) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 2 Area for which the CITY issues building permits to OWNER and shall include up to twenty-two (22) Model Units, and such units are served by the Phase2 Improvements.

1.1.23 "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.

1.1.24 "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.

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

1.1.26 "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.

1.1.27 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Rich-Haven Specific Plan.”

1.1.28 “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.

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

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

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

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Phasing Plan

E-1 – Phase 1 Improvements

E-2 – Phase 2 Improvements

Exhibit “F” — Infrastructure Improvements Exhibits

F-1A– Phase 1 Offsite Infrastructure Improvements

F-1B – Phase 1 Secondary Access Offsite Infrastructure Improvements

F-2 – Phase 1 Onsite Infrastructure Improvements

F- 3 – Phase 2 Offsite Infrastructure Improvements

F-4 – Phase 2 Onsite Infrastructure Improvements

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 and residential use only 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.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.5.1 Amendment to Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the

same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

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

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

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

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

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

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

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

If to CITY:

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

with a copy to:

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

If to OWNER:

Haven Ontario NMC 1, LLC
3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attn: Craig Cristina
Email: ccristina@richlandcommunities.com
Phone: (949) 383-4124
Fax: (949) 261-7016

Haven Ontario NMC 2, LLC
3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attn: Craig Cristina
Email: cristina@richlandcommunities.com
Phone: (949) 383-4124
Fax: (949) 261-7016

with a copy to:

Richland Legal Department
3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attn: Courtney Nelson
Email: cnelson@richlandinvestments.com
Phone: (949) 261-7010 x210
Fax: (949) 261-7013

(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 Exhibit "F" is a description 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-two (22) Model Units per Phase, private common recreation facilities and sales facilities. CITY may issue a maximum of twenty-two (22) building permits per Phase for Model Units in addition to 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 Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of master planned storm drain improvements from the Property to Haven Avenue Storm Drain (Phase 1) and from the Property to the ultimate connection with the County Line Channel (Phase 2) as described in Exhibits F-1A through F-4. OWNER shall be responsible for the design, construction, and completion of the required master planned storm drain improvements as shown in Exhibits F-1A through F-4.

3.7.2 OWNER agrees that development of the Project shall require the construction of Master Planned street improvements on Haven Avenue and Mill Creek Avenue, including signalization as described in Exhibits F-1A through Exhibit F-4.

3.7.2.1 Street Improvements Phasing. OWNER shall design, construct and complete Street Improvements as described in Exhibits F-1A through F-4. The Street Improvements as shown on Exhibits F-1A and F-2 shall be completed prior to, and as a condition precedent to OWNER requesting the issuance of the first Production Permit for the Phase 1 Units. The Mill Creek Avenue Street Improvements as shown on Exhibit F-1B shall be commenced prior to, and as a condition precedent to OWNER requesting the issuance of the 251st Production Permit for Phase 1 Units in the event a secondary point of access has not been constructed and completed by other Developers through Tract 20081 to Ontario Ranch Road, and such Mill Creek Avenue improvements shall be designed and constructed in a manner acceptable to the City Engineer which shall consist

of two lanes between the Project entry at Street "G" and the existing intersection at Ontario Ranch Road as generally described in Exhibit F-1B. If the secondary point of access through Tract 20081 to Ontario Ranch Road has been constructed by other Developers and accepted by the City Engineer, OWNER may construct the remaining 132 Production Units for Phase 1 without requiring the Mill Creek Street improvements described in Exhibit F-1B. The Street Improvements as shown on Exhibits F-3 and F-4, shall be completed prior to, and as a condition precedent to OWNER requesting the issuance of the first Production Permit for the Phase 2 Units. The Phase 2 Mill Creek Avenue Improvements shall consist of full improvements along the project frontage and two lanes between the southern project boundary and the existing intersection at Ontario Ranch Road in a manner acceptable to the City Engineer as shown in Exhibit F-3.

3.7.2.2 Mill Creek Sewer & Storm Drain Improvements and Phasing.

OWNER shall be required to complete the designs and commence construction of the sewer and storm drain improvements as shown in Exhibit F-3, prior to and as a condition precedent to OWNER requesting a Production Unit building permit for a Phase 2 Unit. The Mill Creek Sewer & Storm Drain Improvements shall consist of project frontage improvements and offsite improvements south of the Project to the point of connection existing at the time of construction south of Ontario Ranch Road as described in Exhibits F-3.

3.7.2.3 Rich-Haven Master Planned Storm Drain Alternative.

OWNER shall design, construct and complete onsite master planned storm drain improvements as described in Exhibit F-2. The master planned Storm Drain Improvements as shown on Exhibits F-2 describes a Primary Alignment and an Alternative Alignment. The "Primary Alignment" means the Storm Drain improvements through the Property to Haven Avenue Storm Drain per the existing City Master Plan of Drainage. The "Alternative Alignment" means an alternative alignment to the Master Plan with Storm Drain improvements through APN 0218-161-13 to Haven Avenue Storm Drain north of the Property. The OWNER shall design, construct, and complete either the Primary Alignment or the Alternative Alignment through APN 0218-161-13 (the adjacent property to the north). In the event the Alternative Alignment is deemed infeasible, the OWNER shall provide a written explanation to the City, and shall design, construct, and complete the Primary Alignment to the satisfaction of the City Engineer.

3.7.3 OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure for each Phase as described in Exhibits F-1A through Exhibit F-4, consisting generally of the construction of the extension of permanent master planned water and recycled water utility improvements to serve the respective Phase of the Property. OWNER agrees that no building permits shall be issued by

CITY for Phase 1 Units prior to, and as a condition precedent to the completion of the water and recycled water Improvements as described in Exhibits F-1A and F-2. OWNER also agrees that no building permits shall be issued by the CITY for the Phase 2 Units prior to, and as a condition precedent to the completion of the water and recycled water Improvements as described in Exhibit F-3 and F- 4.

OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during any grading of the Property.

3.7.4 OWNER agrees that NMC Builders shall be responsible for funding a portion of the design and construction of an additional extension of master planned recycled water infrastructure in Haven Avenues to be constructed by CITY. These master planned recycled water Improvements shall also serve the Project. OWNER shall deposit, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the remaining NMC Builders portion of the recycled water improvements in Haven Avenues known as the "remainder of the Phase 2 Recycled Water Improvements" within thirty (30) days after CITY requests funds from NMC Builders for the remainder of the project. 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 remainder of the funding requested by CITY from NMC Builder for the construction of the remaining NMC Builders portion of the Phase 2 Recycled Water System Improvements.

3.7.5 OWNER agrees that development of the Property shall require the extension of permanent master planned sewer improvements, at OWNER's sole cost and expense, as described in the attached Exhibits F-1A through Exhibit F-4, consisting generally of the construction of the extension of sewer infrastructure within Haven Avenue and Mill Creek Avenue to serve the respective Phase of the Property. Owner agrees that no building permits shall be issued by CITY for Phase 1 Production Units prior to, and as a condition precedent to the completion of the sewer improvements as described in Exhibits F-1A and F-2. OWNER also agrees that no building permits shall be issued by the CITY for the Phase 2 Units prior to, and as a condition precedent to, the completion of the sewer improvements as described in Exhibit F-3 and F-4.

3.7.6 OWNER agrees that development of the Property shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibits F-1A through Exhibit F- 4 consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the respective Phase of the Property. OWNER agrees that no building permits shall be issued by the CITY for Phase 1 Units prior to, and as a condition precedent to the completion of master planned fiber optic communications infrastructure as described in Exhibits F-1A

and F-2. OWNER also agree that no building permits shall be issued by the CITY for the Phase 2 Units prior to, and as a condition precedent to the completion of the master planned fiber optic communications infrastructure as described in Exhibit F-3 and F-4.

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 (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. CITY and OWNER agree that Lots A through E of 6.52 net acres combined shall satisfy OWNER's additional park development requirement. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each Phase of the Project as described in this Agreement and as shown on the attached Exhibits for each Phase of the Project. OWNER shall also be responsible for compliance with any and all other tract map conditions. Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements of Tract Map 20134 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase 1 Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for Tract Map 20134 in the Phase 2 area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within the Phase 2 area of the Property.

4.3.1.1 Subject to the provisions of Section 3.7 above, OWNER shall design, or design construct and complete all public infrastructure required for Phase 1 of the Project as shown on Exhibits F-1A and F-2 prior to, and as a condition precedent to, CITY's issuance of the first building permit for Production Units for the Property.

4.3.1.2 OWNER shall design, or design, construct and complete all public infrastructure for Phase 2 as shown in Exhibits F-3 and F-4, prior to, and as a condition precedent to, CITY's issuance of any building permits for any Production Units in the portion of the Project designated as the Phase 2 area on the Conceptual Phasing Plan (Exhibit E). Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements Tract Map 20134 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for any Phase 2 Units.

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

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

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low

and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.4.2.1 through 4.4.2.3. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

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

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

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also

address any deferred property maintenance issues on the property. **“Substantial rehabilitation”** shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.2 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 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 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, Fifty-Three Cents (\$2.53) and the Two Dollars 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 any of the following or any combination thereof: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 Public Services Funding Fee.

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

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of Two Thousand Forty-Eight dollars (\$2,048) 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 One Thousand Twenty-Four Dollars (\$1,024) 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, 2020, 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 One Thousand Twenty-Four Dollars (\$1,024) 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, 2020. 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 Sixty-One Cents (\$0.61) 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, 2020. 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 Effectiveness of Agreement. Notwithstanding anything else set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree, that (i) the City approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, is conditioned upon OWNER's admission to NMC Builders as a "Member" thereof pursuant to the terms and conditions of the operating agreement of NMC Builders. OWNER and CITY agree that if OWNER is not already a Member or an Affiliate Member of NMC Builders, OWNER shall become a Member or an Affiliate Member of NMC Builders within 30 days of effective date of this Agreement

4.7.2 Assigned Net MDD/Water Availability Equivalents. OWNER acknowledges that the City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued

by City. The provisions of the Construction Agreement Amendment require that the City shall not approve a final tract map or issue building permits or certificates of occupancy for the area of development within 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.

4.7.3 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for City's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.7.4 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 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 4.10, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement 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 initially 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. OWNER shall be entitled to initiate up to one additional Periodic Review each calendar year in order to demonstrate good faith compliance by the OWNER to any third party. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date of this Agreement. Within fifteen (15) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the fifteen (15) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY's intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

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

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

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

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

(a) The time and place of the hearing;

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

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

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify

this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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

7. [RESERVED]

8. DEFAULT AND REMEDIES.

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

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

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

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

(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

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

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

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

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

9. THIRD PARTY LITIGATION.

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

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

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

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

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

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

10. MORTGAGEE PROTECTION.

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

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

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

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

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

condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint 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. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

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

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

"OWNER"

HAVEN ONTARIO NMC 1, LLC, a
Florida limited liability company,

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

HAVEN ONTARIO NMC 2, LLC, a
Florida 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

ACKNOWLEDGEMENT

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 _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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 _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

_____ who proved to me on the basis of satisfactory evidence to be the person 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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 _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXHIBIT "B"
TO DEVELOPMENT AGREEMENT

Map showing Property and its location



EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On October 23, 2007 the Planning Commission:

- a) Issued Resolution No. PC07-125 recommending City Council certification of the Rich-Haven Specific Plan EIR (SCH#2006051081).
- b) Issued Resolution No. PC07-127 recommending to City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004)

On December 4, 2007, the City Council:

- a) Issued Resolution No. 2007-145 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 No. 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 No. PC18-014 recommending City Council adoption of an Addendum to the Rich-haven EIR.
- b) Issued Resolution No. PC18-015 recommending to City Council adoption 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.

**EXHIBIT "C" CONTINUED
TO DEVELOPMENT AGREEMENT**

Existing Development Approvals

On April 23, 2019, the Planning Commission:

- a) Issued Resolution No. PC19-020 for the approval of Tentative Tract Map No. 20134 (File No. PMTT17-013)
- b) Issued Resolution No. PC19-024 recommending to City Council approval of the Development Agreement (File No. PDA18-005)

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

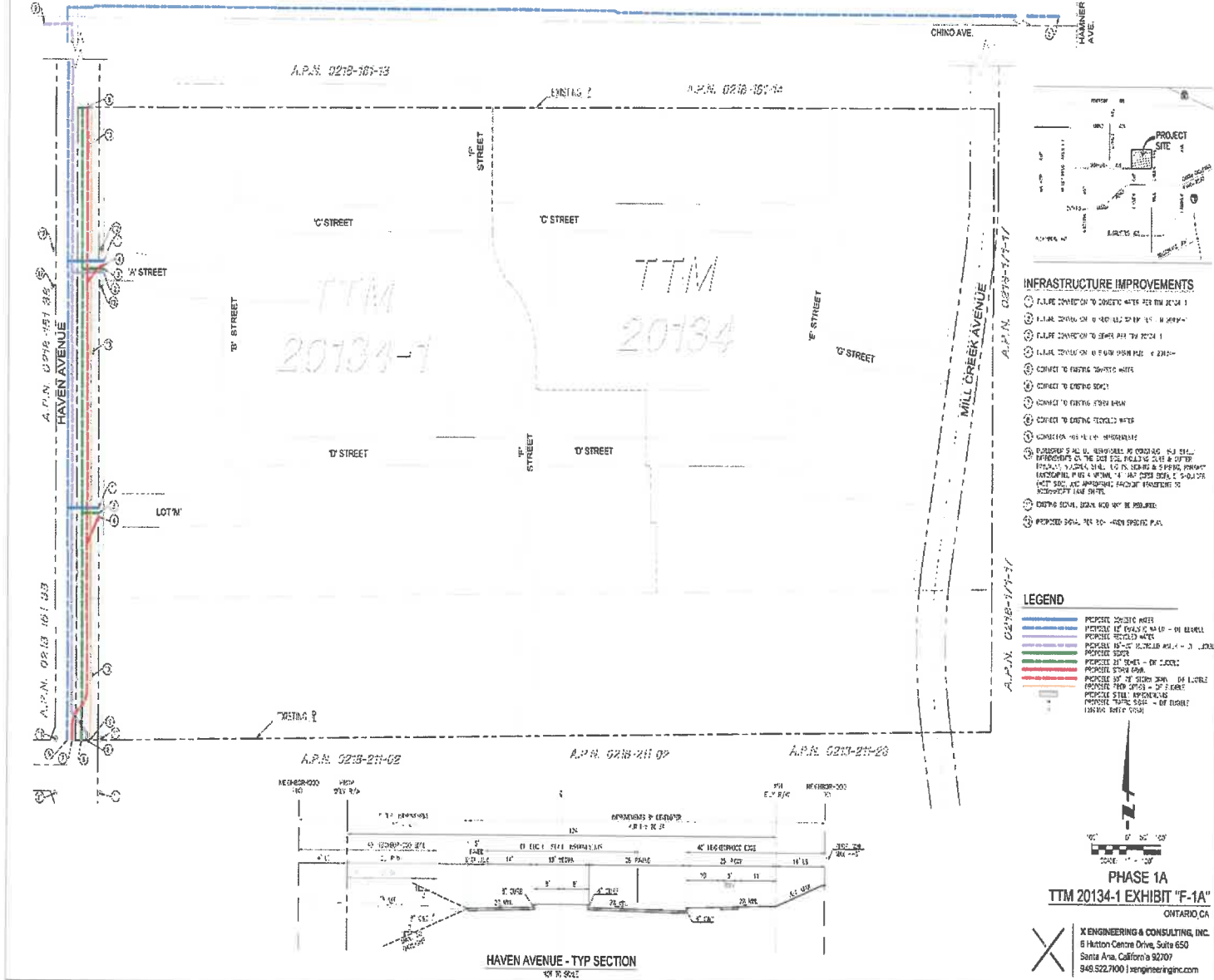
1. The Rich-Haven Specific Plan (File No. PSP05-004) Environmental Impact Report, Resolution No. 2007-145.
2. The Rich-Haven Specific Plan (File No. PSP05-004), Ordinance No. 2884.
3. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-001) Environmental Impact Report, Resolution No. 2016-024.
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-1A"
TO DEVELOPMENT AGREEMENT**

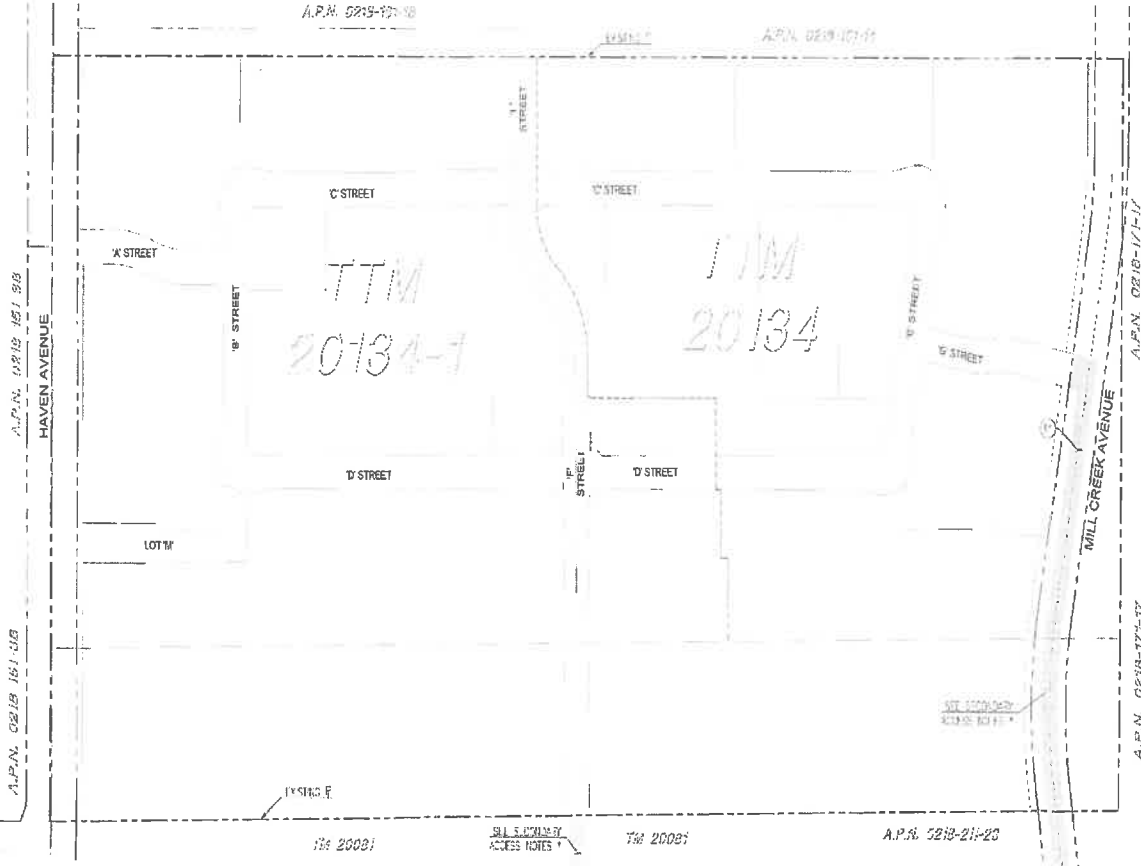
Phase 1 – Required Offsite Infrastructure Improvements

TENTATIVE TRACT MAP 20134-1

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
OFFSITE INFRASTRUCTURE IMPROVEMENTS



TENTATIVE TRACT MAP 20134-1
 IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
 STATE OF CALIFORNIA
 OFFSITE INFRASTRUCTURE IMPROVEMENTS



INFRASTRUCTURE IMPROVEMENTS
 (S) SEE SPEC. FOR PROVISIONS TO CONSTRUCT IN ALL CITIES
 AND ALL JURISDICTIONS OF THE STATE OF CALIFORNIA IN ALL
 PARTS OF THE STATE. SEE SPEC. FOR PROVISIONS TO
 CONSTRUCT IN ALL CITIES AND ALL JURISDICTIONS OF
 THE STATE. SEE SPEC. FOR PROVISIONS TO CONSTRUCT
 IN ALL CITIES AND ALL JURISDICTIONS OF THE STATE.

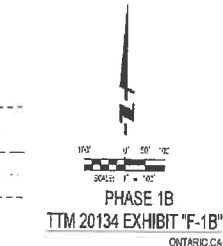
LEGEND
 [Symbol] FUTURE 15' WIDE EASEMENT
 [Symbol] FUTURE 15' WIDE EASEMENT ACCESS TO 100%
 OF 15' WIDE EASEMENT

SECONDARY ACCESS NOTES

1. THE SECONDARY ACCESS NOTES ARE TO BE CONSIDERED AS PART OF THE TRACT MAP AND SHALL BE CONSIDERED AS PART OF THE TRACT MAP. THE SECONDARY ACCESS NOTES ARE TO BE CONSIDERED AS PART OF THE TRACT MAP AND SHALL BE CONSIDERED AS PART OF THE TRACT MAP.
2. IN THE EVENT A SECONDARY ACCESS IS REQUIRED TO BE CONSIDERED AS PART OF THE TRACT MAP, THE SECONDARY ACCESS NOTES ARE TO BE CONSIDERED AS PART OF THE TRACT MAP AND SHALL BE CONSIDERED AS PART OF THE TRACT MAP.

NOTES

1. THE SECONDARY ACCESS NOTES ARE TO BE CONSIDERED AS PART OF THE TRACT MAP AND SHALL BE CONSIDERED AS PART OF THE TRACT MAP.



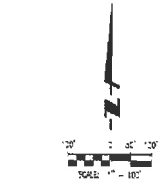
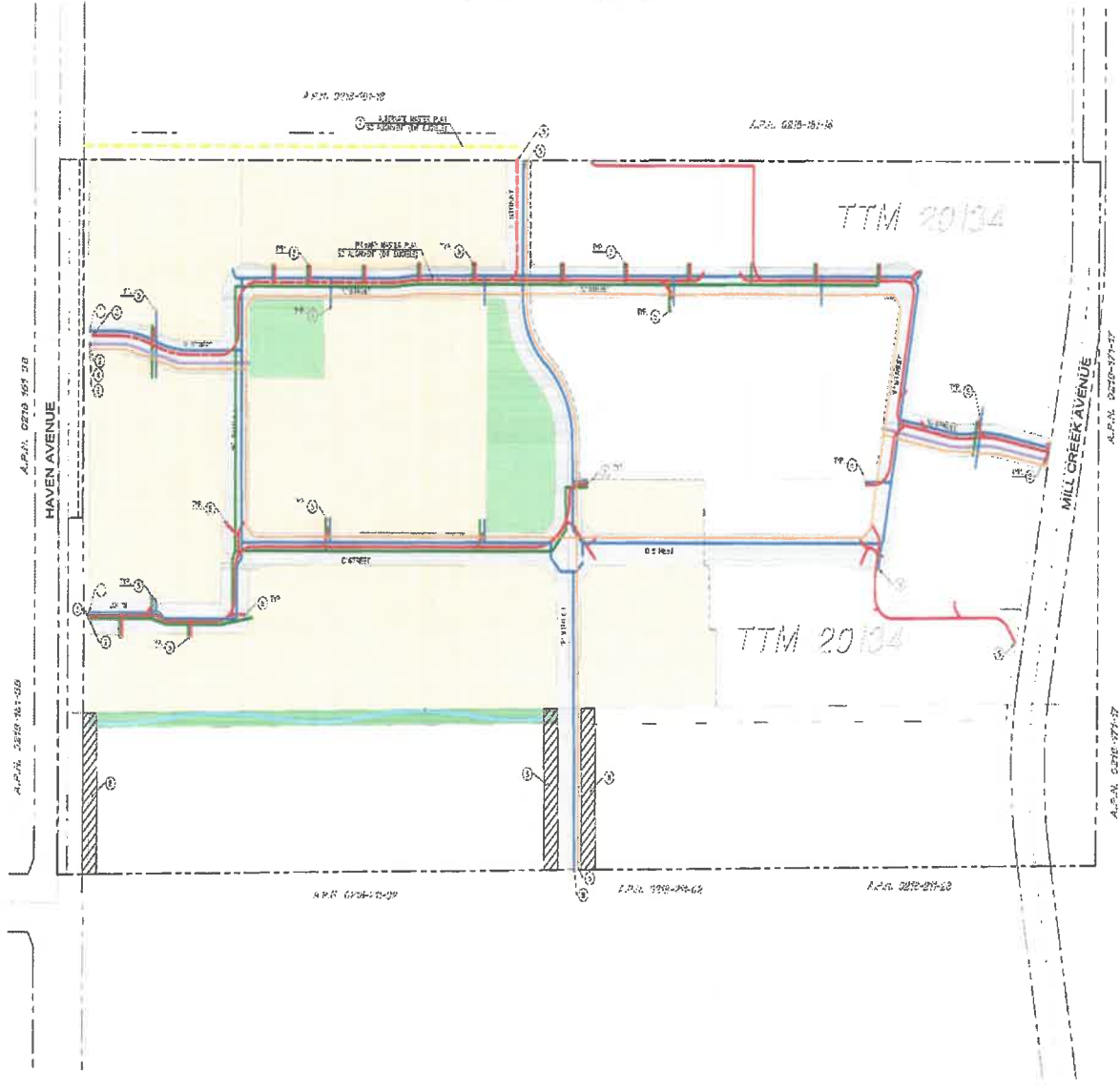
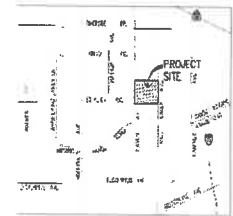
PHASE 1B
 TTM 20134 EXHIBIT "F-1B"
 ONTARIO, CA
 X ENGINEERING & CONSULTING, INC.
 6 Horizon Centre Drive, Suite 650
 Santa Ana, California 92707
 949.522.7100 | xengineering.com

EXHIBIT "F-1B"
 TO DEVELOPMENT AGREEMENT
 Phase 1 – Secondary Access Requirements

**EXHIBIT "F-2"
TO DEVELOPMENT AGREEMENT**

Phase 1 – Required Onsite Infrastructure Improvements

TENTATIVE TRACT MAP 20134-1
 IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
 STATE OF CALIFORNIA
 ONSITE INFRASTRUCTURE IMPROVEMENTS



- INFRASTRUCTURE IMPROVEMENTS**
- 1. CONVERT TO OFF-PAVEMENT WATER LINE
 - 2. CONVERT TO OFF-PAVEMENT SEWER LINE
 - 3. CONVERT TO OFF-PAVEMENT STORM LINE
 - 4. CONVERT TO AS PHO SEWER & WWT PLANT
 - 5. CONSTRUCTION FOR UTILITY OPENINGS
 - 6. CONSTRUCTION FOR DESIGN FLOOD CONTROL
 - 7. ATTEMPT TO POWER TO THE HOUSE FROM EXISTING UNDERGROUND SYSTEM AND COORDINATE TO THE NEIGHBORLY POWER FROM MOUNTAIN VIEW
 - 8. THE APPLICATIONS OWNER SHALL AT THEIR SOLE DISCRETION WITH CONSULTATION WITH THE ENGINEER, PROVIDE THE NECESSARY MATERIALS, CONTRACT SURETY ACCURACY, ETC. TO THE NEIGHBORLY STREET PLAN

- LEGEND**
- PROPOSED EXISTING WATER
 - PROPOSED EXISTING SEWER
 - PROPOSED EXISTING STORM
 - PROPOSED EXISTING WATER
 - PROPOSED EXISTING SEWER
 - PROPOSED EXISTING STORM
 - PROPOSED EXISTING WATER
 - PROPOSED EXISTING SEWER
 - PROPOSED EXISTING STORM
 - PROPOSED EXISTING WATER
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 - PROPOSED EXISTING STORM
 - PROPOSED EXISTING WATER
 - PROPOSED EXISTING SEWER
 - PROPOSED EXISTING STORM

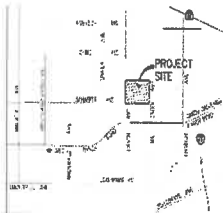
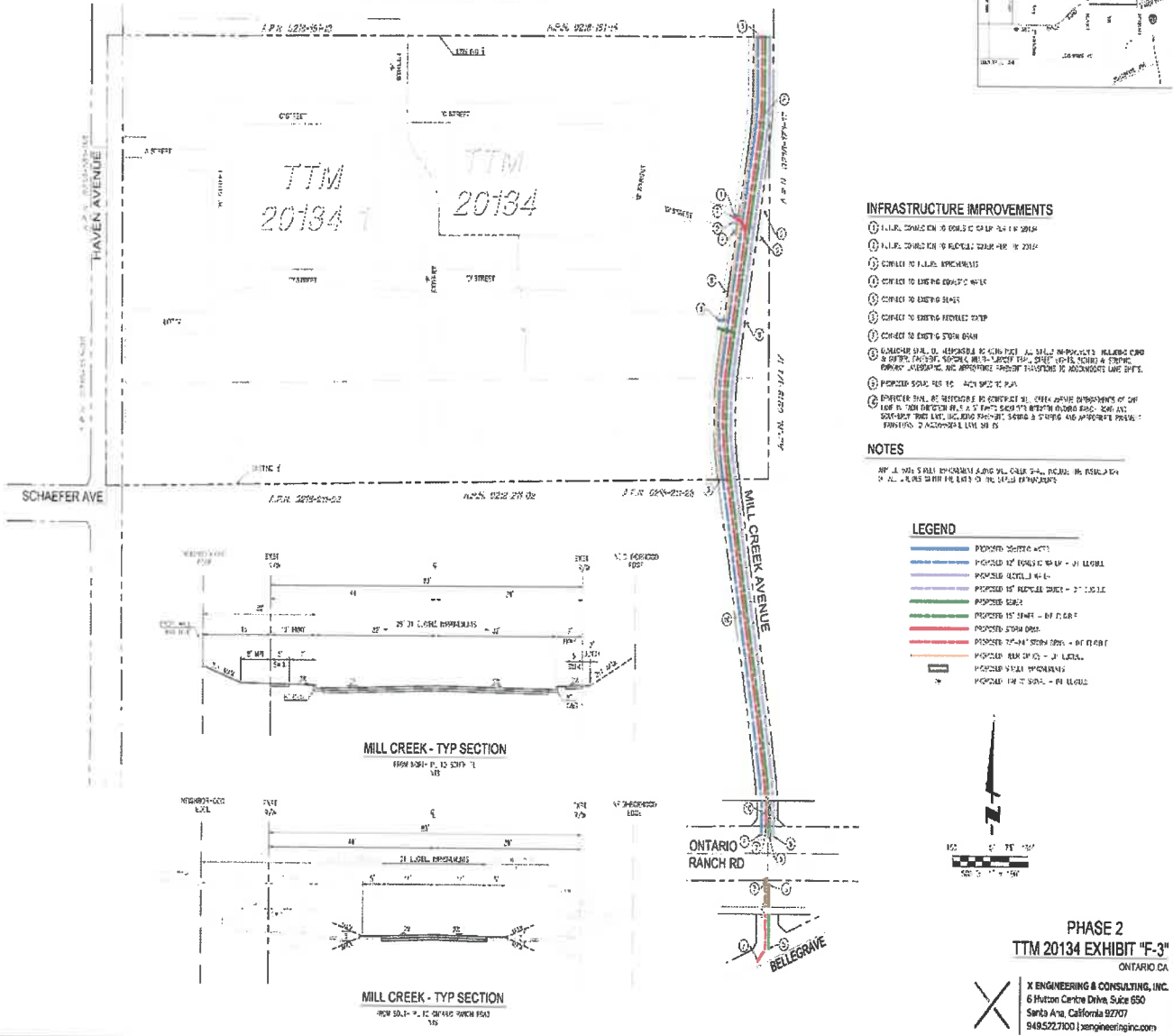
PHASE 1
 TTM 20134-1 EXHIBIT "F-2"
 ONTARIO, CA

X ENGINEERING & CONSULTING, INC.
 6 Hutton Centre Drive, Suite 650
 Santa Ana, Ca 92705 92707
 949.522.7100 | xengineering.com

TENTATIVE TRACT MAP 20134

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

OFFSITE INFRASTRUCTURE IMPROVEMENTS



INFRASTRUCTURE IMPROVEMENTS

1. FULL CONNECTION TO EXISTING OR NEW STORM DRAIN
2. FULL CONNECTION TO EXISTING OR NEW SANITARY
3. CONDUIT TO EXISTING MANHOLE
4. CONDUIT TO EXISTING MANHOLE
5. CONDUIT TO EXISTING MANHOLE
6. CONDUIT TO EXISTING MANHOLE
7. CONDUIT TO EXISTING MANHOLE
8. CONDUIT TO EXISTING MANHOLE
9. CONDUIT TO EXISTING MANHOLE
10. CONDUIT TO EXISTING MANHOLE
11. CONDUIT TO EXISTING MANHOLE
12. CONDUIT TO EXISTING MANHOLE
13. CONDUIT TO EXISTING MANHOLE
14. CONDUIT TO EXISTING MANHOLE
15. CONDUIT TO EXISTING MANHOLE
16. CONDUIT TO EXISTING MANHOLE
17. CONDUIT TO EXISTING MANHOLE
18. CONDUIT TO EXISTING MANHOLE
19. CONDUIT TO EXISTING MANHOLE
20. CONDUIT TO EXISTING MANHOLE

NOTES

1. ALL INFRASTRUCTURE SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF ONTARIO SPECIFICATIONS AND STANDARDS.

LEGEND	DESCRIPTION
[Blue line]	PROPOSED 12" DIAMETER 10' DEEP
[Red line]	PROPOSED 12" DIAMETER 10' DEEP
[Green line]	PROPOSED 12" DIAMETER 10' DEEP
[Purple line]	PROPOSED 12" DIAMETER 10' DEEP
[Orange line]	PROPOSED 12" DIAMETER 10' DEEP
[Yellow line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Blue line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Green line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Purple line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Orange line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Yellow line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Light Blue line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Light Green line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Light Purple line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Light Orange line]	PROPOSED 12" DIAMETER 10' DEEP
[Light Light Yellow line]	PROPOSED 12" DIAMETER 10' DEEP



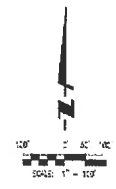
PHASE 2
TTM 20134 EXHIBIT "F-3"
ONTARIO CA

X ENGINEERING & CONSULTING, INC.
6 Patton Centre Drive, Suite 650
San Diego, California 92107
949.522.7100 | xengineeringinc.com

EXHIBIT "F-3" TO DEVELOPMENT AGREEMENT

Phase 2 – Required Offsite Infrastructure Improvements

TENTATIVE TRACT MAP 20134
 IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
 STATE OF CALIFORNIA
 ONSITE INFRASTRUCTURE IMPROVEMENTS



INFRASTRUCTURE IMPROVEMENTS

- ① 12\"/>

LEGEND

- PROPOSED 20\"/>
- PROPOSED 24\"/>
- PROPOSED 36\"/>
- PROPOSED 48\"/>
- PROPOSED 60\"/>
- PROPOSED 72\"/>
- PROPOSED 84\"/>
- PROPOSED 96\"/>
- PROPOSED 108\"/>
- PROPOSED 120\"/>
- PROPOSED 144\"/>
- PROPOSED 180\"/>

PHASE 2
 TTM 20134 EXHIBIT "F-4"
 ONTARIO, CA

X ENGINEERING & CONSULTING, INC.
 6 Hutton Centre Drive, Suite 650
 Santa Ana, California 92707
 949.522.7700 | xengineer@inc.com

EXHIBIT "F-4"
 TO DEVELOPMENT AGREEMENT
 Phase 2 – Required Onsite Infrastructure Improvements

CITY OF ONTARIO

Agenda Report

June 4, 2019

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA19-002, REVISING PORTIONS OF THE ONTARIO DEVELOPMENT CODE CHAPTER 4 (PERMITS, ACTIONS AND DECISIONS) AS IT PERTAINS TO ADMINISTRATIVE USE PERMITS, AND CHAPTER 5 (ZONING AND LAND USE) AS IT PERTAINS TO THE ESTABLISHMENT OF ALCOHOLIC BEVERAGE MANUFACTURING AND SALES, AND LIVE ENTERTAINMENT LAND USES

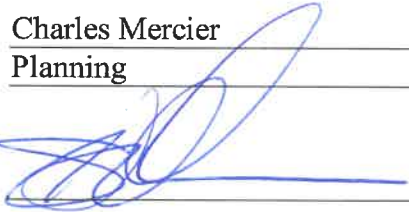
RECOMMENDATION: That the City Council introduce and waive further reading of the ordinance approving File No. PDCA19-002, a Development Code Amendment revising portions of Ontario Development Code Chapter 4 (Permits, Actions and Decisions) as it pertains to Administrative Use Permits, and Chapter 5 (Zoning and Land Use) as it pertains to the establishment of alcoholic beverage manufacturing and sales, and live entertainment land uses.

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

FISCAL IMPACT: None.

BACKGROUND: The proposed Development Code Amendment is the first of several Development Code revisions that staff will be bringing forward to the City Council for consideration intended to foster growth and vitality in the Downtown Mixed Use District (MU-1 zoning district) and promote the establishment of activities necessary for the creation of a dynamic downtown. The changes proposed by this Development Code Amendment will:

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

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

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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(1) Expand on current provisions contained in Development Code Section 4.03.015 (Administrative Use Permits), to include reasons and procedures for the suspension and revocation of Administrative Use Permits and the issuance of administrative fines by the Police Chief or Community Improvement Director. Additionally, an appeals procedure is established, which is heard by the Zoning Administrator, with no further administrative right of appeal.

(2) Expand Table 5.02-1 (Land Use Matrix) as it applies to alcoholic beverage manufacturing facilities; live entertainment in conjunction with a bona fide restaurant or alcoholic beverage manufacturing facility tasting room; and alcoholic beverage sales for on-premises consumption in conjunction with a bona fide restaurant or alcoholic beverage manufacturing facility tasting room, and allowing these uses as an administratively permitted land use, provided they are less than 10,000 square feet in gross floor area. These proposed changes to the Land Use Matrix will eliminate the requirement for a Conditional Use Permit when establishing the aforementioned uses in the MU-1 zoning district.

(3) Expand Table 5.02-1 (Land Use Matrix) to specify that alcoholic beverage manufacturing facilities, regardless of size, are a permitted land use in the IL (Light Industrial), IG (General Industrial) and IH (Heavy Industrial) zoning districts.

(4) Add Section 5.03.023, establishing land use standards for alcoholic beverage manufacturing facilities.

(5) Amend Section 5.03.025, clarifying existing land use standards applicable to on-sale and off-sale alcoholic beverage sales, and expand and clarify existing “public convenience or necessity” determination criteria.

On April 23, 2019, the Planning Commission conducted a public hearing to consider the proposed Development Code Amendment, and voted (4-0) to issue a Resolution No. PC19-027 recommending the City Council approve the project.

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA19-002, A DEVELOPMENT CODE AMENDMENT REVISING PORTIONS OF THE ONTARIO DEVELOPMENT CODE CHAPTER 4 (PERMITS, ACTIONS AND DECISIONS) AS IT PERTAINS TO ADMINISTRATIVE USE PERMITS, AND CHAPTER 5 (ZONING AND LAND USE) AS IT PERTAINS TO THE ESTABLISHMENT OF ALCOHOLIC BEVERAGE MANUFACTURING AND SALES, AND LIVE ENTERTAINMENT LAND USES, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA19-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Development Code Amendment is the first of several proposed changes to the Development Code intended to spur interest and growth in the MU-1 (Downtown Mixed Use) zoning district; and

WHEREAS, the changes proposed by this Development Code Amendment will revise certain provisions to:

- Expand on current provisions contained in Section 4.03.015 (Administrative Use Permits), to include reasons and procedures for the suspension and revocation of Administrative Use Permits and the issuance of administrative fines;
- Amend Table 5.02-1 (Land Use Matrix) as it pertains to alcoholic beverage manufacturing facilities, live entertainment, and alcoholic beverage sales for consumption on the premises, allowing facilities less than 10,000 square feet in area as an administratively permitted land use in the MU-1 (Downtown Mixed Use) zoning district, and adding alcoholic beverage manufacturing facilities regardless of size, as a permitted land use in the IL (Light Industrial), IG (General Industrial) and IH (Heavy Industrial) zoning districts;
- Add Section 5.03.023 to establish land use standards for alcoholic beverage manufacturing facilities;
- Amend Section 5.03.025, clarifying existing land use standards for on-sale and off-sale alcoholic beverage sales, and expand existing "public convenience or necessity" determination criteria; and

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

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

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

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

WHEREAS, on April 23, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date, voting to issue Resolution No. PC19-027 recommending the City Council approve the Application; and

WHEREAS, on June 4, 2019, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

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

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

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

SECTION 2. *Development Code Section 4.03.015 (Administrative Use Permits) Amended.* Development Code Section 4.03.015 (Administrative Use Permits) shall be amended, adding Subsections F through I to read as follows:

“F. Unlawful Business Practices May Be Enjoined; All Remedies Are Cumulative. Any business activity requiring Administrative Use Permit approval pursuant to Table 5.02-1 (Land Use Matrix) of this Development Code, and which is operated, conducted, or maintained contrary to the provisions of this Development Code, shall constitute an unlawful business practice pursuant to Business & Professions Code Section 17200 et seq., and the City may file a complaint with the District Attorney and request the District Attorney bring action seeking an injunction prohibiting the unlawful business practice or any other remedy available at law, including but not limited to fines, attorney’s fees, and costs. All remedies provided for in this Section are cumulative.

G. Administrative Fines.

1. Violations. Upon a finding by the Police Chief or Community Improvement Director that a land use or business for which an Administrative Use Permit has been issued has violated any provision of this Development Code or of the City or Ontario Municipal Code, the Police Chief or Community Improvement Director may issue an administrative fine of up to \$500.

2. Separate Violations. Each violation of this Development Code or of the Ontario Municipal Code constitutes a separate violation. Each day a violation of this Development Code occurs also constitutes a separate violation.

3. Administrative Fine Procedures. A Notice of Administrative Fine shall be served by hand delivery or certified mail and shall state the legal violation and all supporting facts. Furthermore, the Notice shall also contain an advisement of the right to request an appeal hearing before the Zoning Administrator to contest the suspension or revocation.

4. Appeal of Administrative Fines.

a. An appeal request shall be filed with the Planning Department on a City application form, within 10 days following the date appearing on the Notice of Administrative Fine. The appeal request shall include a statement identifying the pertinent facts disputing the violation.

b. An appeal hearing shall be scheduled within 30 days following the Planning Department’s receipt of the appeal request, unless an extension is mutually agreed upon by the appellant and the Zoning Administrator.

c. The appeal shall be heard by the Zoning Administrator. The decision of the Zoning Administrator shall be provided by certified mail. The decision constitutes a final administrative order, with no additional administrative right of appeal.

5. Failure to Pay Administrative Fines.

a. If an administrative fine is not paid within 30 days after the date appearing on the Notice of Administrative Fine or, if the Notice is appealed, within 30 days after the date of the Zoning Administrator's decision, whichever occurs later, the fine may be referred to a collection agency.

b. Any outstanding fine must be paid prior to the issuance or renewal of any license or permit issued by the City.

H. Suspension and Revocation of Administrative Use Permits.

1. Reasons. The Police Chief and the Community Improvement Director each has authority to suspend or revoke an Administrative Use Permit, based on one or more of the following reasons:

a. The Administrative Use Permit approval was obtained by fraud.

b. The Administrative Use Permit is being or has recently been exercised contrary to the terms or conditions of the application approval.

c. The Administrative Use Permit is being or has been exercised in violation of a federal, state, or City statute, ordinance, law, or regulation.

d. The Administrative Use Permit was exercised in a way that is detrimental to the public peace, health, safety, or welfare, or otherwise constitutes a nuisance.

2. Suspension and Revocation Procedures. A Notice of Suspension or Revocation shall be served on the owner of the property and upon any tenant or operator in possession of the property, if different from the owner, by hand delivery or certified mail, along with the legal violation and supporting facts. The Notice shall also contain an advisement of the right to request an appeal hearing before the Zoning Administrator to contest the suspension or revocation.

3. Time Period of Suspension of Permit. When any of the conditions listed in H.1.a through d above exists, the Police Chief and the Community Improvement Director are each authorized to suspend an Administrative Use Permit for a period of no less than 5 days, and no more than 90 days, at their discretion.

4. Effective Date of Suspension or Revocation. A Notice of Suspension or Revocation issued under Paragraph H.2 of this Section is effective 10 days following the date appearing on the Notice, in the absence of an appeal filed in accordance with Paragraph H.5 of this Section.

5. Appeal of Suspension or Revocation of Permit.

a. The decision of the Police Chief or Community Improvement Director to suspend or revoke an Administrative Use Permit may be appealed by the permittee.

b. The appeal request shall be filed with the Planning Department on a City application form, and shall include a statement identifying pertinent facts disputing the reasons stated in the Notice of Suspension or Revocation.

c. An appeal request must be received by the Planning Department on or before the effective date of the suspension or revocation under Paragraph H.4 of this Section.

d. The timely filing of an appeal request stays a suspension or revocation pending a decision on the appeal by the Zoning Administrator.

e. An appeal hearing shall be scheduled within 30 days following the Planning Department's receipt of the appeal request, unless an extension is mutually agreed upon by the appellant and the Zoning Administrator.

f. Within 20 days following the appeal hearing, the Zoning Administrator shall issue a final administrative order to the appellant, by certified mail. There shall be no further administrative right of appeal.

6. Evidence. The following rules shall apply to any hearing required by this Section. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of discovery do not apply to proceedings governed by this Section. Unless otherwise specifically prohibited by law, the burden of proof is on the appellant in any hearing or other matter under this Section.

7. Limitations on Application Refiling. A holder of an Administrative Use Permit who has had the Permit revoked under this Section may not apply for the same or substantially similar Administrative Use Permit for 12 months after the date of the Final Administrative Order revoking the Permit.

I. Public Nuisance. It shall be unlawful and a public nuisance for a land use or business activity for which an Administrative Use Permit has been issued to be operated, conducted, or maintained contrary to the provisions of this Development Code or of any conditions of approval imposed on an Administrative Use Permit by the Approving Authority. The City may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, or enjoinder of that land use or business activity in any manner provided by law."

SECTION 3. *Development Code Table 5.02-1 (Land Use Matrix) Amended.* Certain portions of Development Code Table 5.02-1 (Land Use Matrix) shall be amended as shown on EXHIBIT A (Development Code Table 5.02-1 (Land Use Matrix) Amended), attached.

SECTION 4. *Development Code Section 5.03.023 (Alcoholic Beverage Manufacturing) Added.* Development Code Section 5.03.023 (Alcoholic Beverage Manufacturing) shall be added to read as follows:

“5.03.023: Alcoholic Beverage Manufacturing

The following regulations shall govern the establishment and operation of alcoholic beverage manufacturing uses and activities, as follows:

A. Alcoholic Beverage Manufacturing in the MU-1 (Historic Downtown Mixed Use) Zoning District. Alcoholic beverage manufacturing facilities established within the MU-1 zoning district shall comply with the following:

1. Land use approval shall be subject to the approval of an Administrative Use Permit pursuant to the requirements of Section 4.03.015 (Administrative Use Permits) of this Development Code.

2. The Gross Floor Area (GFA) of an alcoholic beverage manufacturing facility shall be less than 10,000 SF.

3. An alcoholic beverage manufacturer shall not be permitted unless the licensed alcoholic beverage manufacturer also sells alcoholic beverages to consumers for consumption on the premises, within a tasting room that complies with Subsection D of this Section, or in a bona fide restaurant that is located on the licensed premises, or at a bona fide restaurant that is contiguous to the licensed premises.

4. No video, electronic or other amusement devices or games shall be permitted.

5. Outdoor storage in conjunction with an alcoholic beverage manufacturer shall be prohibited.

B. Sewer Study May Be Required for Alcoholic Beverage Manufacturers in the MU-1 (Historic Downtown Mixed Use) Zoning District. Prior to the issuance of a building permit for the installation of alcoholic beverage manufacturing equipment in the MU-1 zoning district, if deemed necessary by Ontario Municipal Utilities Company (OMUC) General Manager, a sewer study, including an identification of appropriate measures to mitigate sewer deficiencies, shall be prepared as follows:

1. The sewer study shall be prepared by a registered professional civil engineer in the State of California, and submitted for consideration and approval by OMUC. The alcoholic beverage manufacturer shall be responsible for the implementation of all mitigation measures recommended in the sewer study, including the construction of new sewer facilities.

2. Prior to and as a condition of the operation of an alcoholic beverage manufacturing use, the alcoholic beverage manufacturer shall implement all mitigation measures recommended by the sewer study to the satisfaction of the Ontario Municipal Utilities Company General Manager and the City Engineer.

C. Conditional Use Permit Required for Tasting Rooms in the IL (Light Industrial), IG (General Industrial) and IH (Heavy Industrial) Zoning Districts. Within the IL, IG and IH zoning districts, the establishment of a tasting room in conjunction with an alcoholic beverage manufacturer shall require the approval of a Conditional Use Permit pursuant to the requirements of Section 4.02.015 (Conditional Use Permits) of this Development Code. Tasting rooms shall be designed in compliance with the requirements of Subsection D of this Section.

D. Tasting Rooms Not to Exceed 1,000 SF Unless Otherwise Permitted by a Conditional Use Permit. A tasting room shall not exceed 1,000 SF in area, except that within the MU-1 zoning district, tasting rooms in excess of 1,000 SF may be permitted by Conditional Use Permit approval. The tasting room floor area shall include any indoor area within the alcoholic beverage manufacturing licensed premises where alcoholic beverages are consumed, including any bar and seating areas, but shall exclude restrooms serving the tasting room and any outdoor patio areas. Outdoor patio areas may be permitted, provided they are not located in any required parking space or access way, and do not exceed 1,000 SF in total area.

E. Use of Grain Silos. A grain silo may be located outside of a building occupied by an alcoholic beverage manufacturing use, which shall comply with the following:

1. The grain silo shall not be located in any required parking space, driveway or drive aisle, or situated so as to adversely affect the pedestrian path of travel.

2. One sign identifying the alcoholic beverage manufacturing use may be placed on the grain silo, having a maximum area of 9 SF. The silo sign is permitted in addition to any wall signs or monument signs allowed pursuant to Table 8.01-1 (Sign Regulation Matrix) of this Development Code.

F. Outdoor Utility Equipment Shall Be Completely Screened. Outdoor utility equipment associated with an alcoholic beverage manufacturing use shall be completely screened from public view.

G. Property Shall Be Permanently Maintained. The real property upon which an alcoholic beverage manufacturing use is operated shall be permanently maintained in an orderly fashion by the provision of regular landscape maintenance, removal of trash and debris, and removal of graffiti within 24 hours from the time of occurrence.

H. Roof-Mounted or Ground-Mounted Mechanical Equipment Shall Be Completely Screened. Any proposed roof-mounted or ground-mounted mechanical equipment shall be completely screened from public view. Equipment screening information shall be specifically shown on the plans submitted for building permit issuance.

I. Security Plan Required. A security plan, in a form satisfactory to the Ontario Police Department, shall be submitted to and approved by the Police Chief prior to building permit issuance. The security plan shall be formulated to deter unlawful conduct of employees and patrons, to promote the safe and orderly assembly and movement of

persons and vehicles, and to prevent disturbances to surrounding land uses and the neighborhood in general, by excessive noise created by patrons entering or leaving the alcoholic beverage manufacturer's licensed premises.

J. On-Site Lighting Required to Provide a Safe and Secure Environment. Parking lots, driveways, circulation areas, aisles, passageways, recesses, and grounds contiguous to buildings occupied by an alcoholic beverage manufacturing use shall be provided with enough lighting to illuminate and make clearly visible, the presence of any person on or about the alcoholic beverage manufacturer's licensed premises during the hours of darkness, and shall provide a safe and secure environment for all persons, property, and vehicles on and around the premises.

K. Admission Fee, Cover Charge, and Minimum Purchase Requirements. It shall be unlawful to require the payment of an admission fee or cover charge, or require a minimum purchase.

L. Alcoholic Beverage Signs Required. Signs shall be posted inside the business, near the exit door, which states "NO ALCOHOLIC BEVERAGE ALLOWED BEYOND THIS POINT."

M. Maximum Occupancy Load Shall Not Be Exceeded. The number of persons shall not exceed the maximum occupancy load as determined by the Ontario Fire Department. Signs indicating the maximum occupant load shall be posted in a conspicuous place on an approved sign near the main exit from the room.

N. No Live Entertainment or Dancing Permitted without First Obtaining Conditional Use Permit Approval. There shall be no live entertainment or dancing permitted on the alcoholic beverage manufacturer's licensed premises at any time, without first obtaining approval for the activities pursuant to the requirements of this Development Code.

O. Display of Alcoholic Beverages. The display of alcoholic beverages shall not be located outside of a building or within 5 FT of any public entrance to the building.

P. Alcoholic Beverages Distributed By Competing Alcoholic Beverage Manufacturers Shall Not Be Served. An alcoholic beverage manufacturer shall not serve brands of alcoholic beverages distributed by a competing alcoholic beverage manufacturer. The alcoholic beverages served shall be limited to the products that are authorized to be sold by the alcoholic beverage manufacturer under its license issued by the California Department of Alcoholic Beverage Control."

SECTION 5. *Development Code Section 5.03.025 (Alcoholic Beverage Sales) Amended.* Subsection D (Alcoholic Beverage Sales for Consumption on the Premises (On-Sale Alcoholic Beverage Sales)), Subsection E (Alcoholic Beverage Sales for Consumption off the Premises (Off-Sale Alcoholic Beverage Sales)), and Subsection F (Public Convenience or Necessity Determination) of Development Code Section 5.03.025 (Alcoholic Beverage Sales) shall be amended to read as follows:

“D. Alcoholic Beverage Sales for Consumption on the Premises (On-Sale Alcoholic Beverage Sales). On-sale alcoholic beverage sales comprises establishments properly licensed by the Department of Alcoholic Beverage Control of the State of California (ABC), which sell alcoholic beverages of varying types, as allowed by the type of ABC license held by the establishment, for consumption on the premises in which they are sold. Typical uses include, but are not limited to, bars, brew pubs, nightclubs, wine bars, and restaurants that serve alcoholic beverages.

Establishments engaged in on-sale alcoholic beverage sales shall comply with the following:

1. Conditional Use Permit approval shall be required for an on-sale alcoholic beverage sales activity, and/or for the on premise tasting of any alcoholic beverage in conjunction with a legally established, and ABC-licensed wine grower, beer manufacturer, brandy manufacturer, or distilled spirits manufacturer, except that within the MU-1 (Historic Downtown Mixed Use) zoning district, Administrative Use Permit approval shall be obtained from the City prior to establishing an on-sale alcoholic beverage sales use or activity.

2. Any business engaged in on-sale alcoholic beverage sales or on premise tasting of any alcoholic beverage in conjunction with a legally established, and ABC-licensed, wine grower, beer manufacturer, brandy manufacturer, or distilled spirits manufacturer, shall not allow any alcoholic beverage to be consumed outside of the enclosed building, except within an outdoor area that has been designed to be separated from direct public contact/access by a wall, fence or other barrier acceptable to the City. The design of said outdoor area and required wall, fence or other barrier shall be subject to review and approval by the Planning Director and Police Chief.

E. Alcoholic Beverage Sales for Consumption off the Premises (Off-Sale Alcoholic Beverage Sales). Off-sale alcoholic beverage sales comprises establishments properly licensed by the Department of Alcoholic Beverage Control of the State of California (ABC), which sell alcoholic beverages of varying types, as allowed by the type of ABC license held by the establishment, for consumption off the premises in which they are sold. Typical uses include, but are not limited to, convenience stores, grocery stores, and liquor stores.

Establishments engaged in off-sale alcoholic beverage sales shall comply with the following:

1. Conditional Use Permit approval shall be required for off-sale alcoholic beverage sales.

2. Establishments engaged in the concurrent sale of motor vehicle fuel with alcoholic beverage sales shall comply with all of the following conditions pursuant to BPC Section 23790.5:

a. No beer or wine shall be displayed within 5 FT of the cash register or the front door unless it is in a permanently affixed cooler.

- b. No advertisement of alcoholic beverages shall be displayed at motor fuel islands.
- c. No sale of alcoholic beverages shall be made from a drive-up window.
- d. No display or sale of beer or wine shall be made from an ice tub.
- e. No beer or wine advertising shall be located on motor fuel islands and no self-illuminated advertising for beer or wine shall be located on buildings or windows.
- f. Employees on duty between the hours of 10:00PM and 2:00AM, who sell alcoholic beverages, shall be at least 21 years of age.

3. The on-premises consumption of an alcoholic beverage shall be prohibited.

F. Public Convenience or Necessity Determination. BPC Section 23958.4 provides that the City shall have authority to review a retail alcoholic beverage license application proposed within an area having an “undue concentration” (high density of alcoholic beverage sales locations) of licenses; determine whether public convenience or necessity would be served by license issuance; and inform ABC of the determination.

1. Purpose. The purpose of this Subsection is to establish a procedure by which the public convenience or necessity may be determined, as provided by State law, and establish the criteria by which the determination shall be made.

2. Applicability. In considering a Conditional Use Permit or Administrative Use Permit (as applicable) application for alcoholic beverage sales, it shall be the responsibility of the Reviewing Authority prescribed by Table 2.02-1 (Review Matrix) of this Development Code, to make a determination of public convenience or necessity, if required pursuant to this Subsection.

3. Determining Public Convenience or Necessity for On-Sale Alcoholic Beverage Sales Licenses. Within a census tract having an undue concentration of on-sale ABC licenses, whether the public convenience or necessity would be served by an ABC license issuance shall be determined as follows:

a. *Alcoholic Beverage License Issuance in Conjunction with a Bona Fide Restaurant.* The issuance of an alcoholic beverage license in conjunction with a bona fide restaurant is hereby deemed to be provided as convenience to business patrons. The Reviewing Authority shall, therefore, establish that the public convenience would be served by the issuance of an ABC license in such cases.

b. *All Other On-Sale Alcoholic Beverage Licenses.* For all other on-sale alcoholic beverage licenses, the Approving Authority shall determine whether public convenience or necessity would be served by ABC license issuance on a case-by-case basis, upon a thorough review of the facts pertaining to the proposed use.

4. Criteria for Determining Public Convenience or Necessity for Off-Sale Alcoholic Beverage Sales Licenses. Within a census tract having an undue concentration of off-sale ABC licenses, the City desires to strike a balance between the number of off-sale ABC licenses and the convenience of business patrons. Consequently, the Approving Authority is hereby granted authority to make determinations of public convenience and necessity, and shall rely upon the following factors in making such determinations:

a. The proposed retail alcohol license is not located within a high crime area, which is defined as an area characterized by a high ratio of Police Department calls for service to alcohol-related incidences, not to exceed 20 percent greater than the average number of alcohol-related incidences reported for the City as a whole), including, but not limited to, disturbing the peace, public intoxication, assault and battery, prostitution, vandalism, graffiti, loitering, pan-handling, all BPC violations, drug violations, and driving while intoxicated or under the influence;

b. The proposed retail alcohol license is not located within close proximity (600 FT or less, as measured in a straight line from any point along the outer boundaries of the building GFA containing the business) of an existing or proposed residential or sensitive land use (as provided in BPC Section 23789), including hospitals and other healthcare facilities; senior citizen care facilities; preschools; daycare facilities; public or private elementary, middle (junior high) or high schools; public parks; recreation centers; sports parks; or any similar facility where minors (persons under 18 years of age) regularly congregate;

c. The anticipated amount (percentage) of retail sales to be derived from alcoholic beverages is clearly incidental to the primary land use, making-up no more than one-third of anticipated gross retail sales;

d. If the business for which the retail alcoholic beverage license application is proposed is a grocery store, it shall contain at least 12,000 SF of GFA;

e. No more than 10 percent of the retail business' GFA shall be devoted to alcoholic beverage display and sale;

f. At least 10 percent of the retail business' GFA shall be devoted to food display and sales. (Note: Food preparation areas shall not be counted toward the food sales floor area calculation); and

g. The building or property wherein the proposed business is located has no outstanding building or health code violations, is not an active Code Enforcement Department case, and complies with applicable Development Code regulations, including, but not limited to, property maintenance, building improvements, off-street parking (design and number of spaces provided), and landscape and lighting improvements.

5. Criteria for Determining Public Convenience or Necessity for Off-Sale Alcoholic Beverage Sales in Conjunction with Alcoholic Beverage Manufacturing Uses. Within a census tract having an undue concentration of off-sale ABC licenses, the Reviewing Authority is hereby granted authority to make determinations of public convenience and necessity for off-sale alcoholic beverage sales in conjunction with an alcoholic beverage manufacturing uses, and shall rely upon the following factors in making such determinations:

a. The proposed alcoholic beverage manufacturing use is not located within a high crime area, which is defined as an area characterized by a high ratio of Police Department calls for service to alcohol-related incidences, not to exceed 20 percent greater than the average number of alcohol-related incidences reported for the City as a whole), including, but not limited to, disturbing the peace, public intoxication, assault and battery, prostitution, vandalism, graffiti, loitering, pan-handling, all BPC violations, drug violations, and driving while intoxicated or under the influence;

b. The proposed retail alcohol license is not located within close proximity (600 FT or less, as measured in a straight line from any point along the outer boundaries of the building GFA containing the business) of an existing or proposed residential or sensitive land use (as provided in BPC Section 23789), including hospitals and other healthcare facilities; senior citizen care facilities; preschools; daycare facilities; public or private elementary, middle (junior high) or high schools; public parks; recreation centers; sports parks; or any similar facility where minors (persons under 18 years of age) regularly congregate;

c. The retail sales of alcoholic beverages is ancillary to the primary alcoholic beverage manufacturing use; and

d. The building or property wherein the proposed business is located has no outstanding building or health code violations, is not an active Code Enforcement Department case, and complies with applicable Development Code regulations, including, but not limited to, property maintenance, building improvements, off-street parking (design and number of spaces provided), and landscape and lighting improvements.”

SECTION 6. *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 7. *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 6, above, the City Council hereby concludes as follows:

(1) The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

SECTION 8. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 7, above, the City Council hereby APPROVES the herein described Development Code Amendment.

SECTION 9. *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 10. *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 11. *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 12. *Effective Date.* This Ordinance shall become effective 30 days following its adoption.

SECTION 13. *Publication and Posting.* The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2019.

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 _____, 2019, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER RESOLUTIONS REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 51 (ONTARIO RANCH LOGISTICS CENTER SERVICES) AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES

RECOMMENDATION: That the City Council consider and:

- (A) Adopt a resolution establishing City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services), authorizing the levy of a special tax within the community facilities district, and establishing an appropriations limit for the community facilities district;
- (B) Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services);
- (C) Adopt a resolution declaring the results of the special election and directing the recording of the Notice of Special Tax Lien; and
- (D) Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services).


COUNCIL GOALS: Operate in a Businesslike Manner

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

FISCAL IMPACT: In accordance with the City Council's long standing direction that development of the Ontario Ranch generate sufficient revenues to fund its required City services without reliance on the financial resources of the existing City, the use of Mello-Roos financing in connection with the Ontario Ranch Logistics Center development is projected to generate approximately \$900,000 per year, at

STAFF MEMBER PRESENTING: Armen Harkalyan, Executive Director of Finance

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

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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build-out, to fund City services. As proposed, the maximum annual tax rate is \$.31 per square foot for the project's anticipated 2,905,510 square feet. The use of Mello-Roos financing is critical in achieving the City Council's goal of "Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch". The use of Mello-Roos financing for the Ontario Ranch Logistics Center development will not generate funds for facilities, and bonds will not be issued as part of this formation.

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

On April 16, 2019, the City Council approved Resolution No. 2019-033, a Resolution of the City of Ontario, California, of Intention to Establish City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services) and to Authorize the Levy of Special Taxes within the district (Resolution of Intention). The Ontario Ranch Logistics Center project addresses the development of approximately 131.9 gross acres located south of Eucalyptus Avenue, north of Merrill Avenue, east of Carpenter Avenue and west of the Cucamonga Creek Channel.

The community facilities district is being formed pursuant to the provisions of the landowner's Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders. Included, as part of the Resolution of Intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 51 (Ontario Ranch Logistics Center Services). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos Local Goals and Policies, and City staff have discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner. The Resolution of Intention set the public hearing on the establishment of the community facilities district for June 4, 2019. In accordance with requirements of the Resolution of Intention, and pursuant to Section 53322 of the California Government Code, the City Clerk has published a notice of the time and place of this hearing at least seven days before the hearing.

Attached are three resolutions and an ordinance. The first resolution establishes the community facilities district, with the rate and method of apportionment of special tax, authorizes the levy of special tax within the district, and establishes an appropriation limit. The second resolution calls for a special landowner election to be held on June 4, 2019. The third resolution declares the results of the election and includes a statement from the City Clerk as to the canvass of ballots, and directs the recording of the Notice of Special Tax Lien. The ordinance authorizes the levying of special taxes within the district. As noted, the issuance of bonds is not being contemplated for this project, so there is no resolution to issue bonds as part of this formation.

CITY OF ONTARIO

Agenda Report
June 4, 2019

SECTION:
ADMINISTRATIVE REPORTS/
DISCUSSION/ACTION

SUBJECT: A LEGAL SERVICES AGREEMENT FOR INTERIM CITY ATTORNEY SERVICES

RECOMMENDATION: That the City Council consider a Legal Services Agreement with Cole Huber LLP, of Roseville, California, to provide City Attorney services on an interim basis, and authorize the City Manager to execute said agreement.

COUNCIL GOALS: Operate in a Businesslike Manner


FISCAL IMPACT: The Fiscal Year 2018-19 Adopted Operating Budget includes appropriations for City Attorney Services. Any fiscal impacts resulting from the change in City Attorney services will be accounted for in future fiscal year budgets.

BACKGROUND: As a general law city, Ontario has no elected City Attorney. Nor is there a requirement, either in state statute or by city ordinance, for a singular, appointed City Attorney. As such, City Attorney services are thereby provided by contract.

In 1997, the City Council approved a contract with the law firm of Best, Best & Krieger LLP (BB&K) to provide City Attorney services. BB&K has served in that capacity for the past twenty-two years, with attorney John E. Brown serving as the primary City Attorney. Earlier this year, Mr. Brown informed the City of his intention to reduce the number of hours he will work on City Attorney issues, and the firm's intention to transition him out of the role as primary City Attorney.

In light of this news, on March 5, 2019, the City Council conducted a closed session Public Employee Performance Evaluation for BB&K as City Attorney and provided direction to staff. Subsequently, on April 5, 2019, the City Council considered a closed session item concerning Public Employee Appointment for City Attorney, and again provided direction to staff. Pursuant to direction provided by the City Council, staff has negotiated a legal services agreement with the law firm of Cole Huber LLP for the provision of interim City Attorney services.

STAFF MEMBER PRESENTING: David Sheasby, Deputy City Manager

Prepared by: David Sheasby
Department: Administrative Services
City Manager Approval: 

Submitted to Council/O.H.A. 06/04/2019
Approved: _____
Continued to: _____
Denied: _____

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Under the negotiated terms, Cole Huber LLP will assume responsibility for the provision of interim City Attorney services for a period of approximately six months. At the end of the six-month period, a performance evaluation will be scheduled to allow the City Council an opportunity to provide direction on whether to: (1) extend the interim period; (2) designate Cole Huber LLP as City Attorney, or (3) initiate a process to consider other potential firms as deemed appropriate.

The attached agreement would establish a two-tiered rate structure. Rates for routine, general counsel services would be \$225/hour for all attorney services and \$150/hour for paralegal and law clerk services. Rates for non-routine, extraordinary services would be a range of \$235/hour - \$300/hour for partner work, a range of \$210/hour - \$235/hour for associate work, and \$150/hour for paralegal and law clerk services. Extraordinary services are defined as twenty-two categories of non-routine legal work identified as complex and requiring subject matter expertise beyond what is required for general city attorney work.

Consistent with the City's existing practice, the City retains the right to contract with subject matter experts for the provision of certain legal services, such as labor, water law, and code enforcement.