CITY OF FONTANA AGENDA
REGULAR CITY COUNCIL MEETING
September 12, 2017
Grover W. Taylor Council Chambers
8353 Sierra Avenue
Fontana, CA 92335
7:00 PM

Information in shaded boxes also pertains to meetings directly following the Council Meeting.

Welcome to a meeting of the Fontana City Council. A complete agenda packet is located in the binder on the table in the lobby of the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335. To address the Council, please fill out a card located at the entrance to the right indicating your desire to speak on either a specific agenda item or under Public Communications and give it to the City Clerk. Your name will be called when it is your turn to speak. In compliance with Americans with Disabilities Act, the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335 is wheel chair accessible and a portable microphone is available. Any public record, relating to an open session agenda item, that is distributed within 72 hours prior to the meeting is available for public inspection in the Grover W. Taylor Council Chambers 8353 Sierra Avenue Fontana, CA 92335.

Traduccion en Espanol disponible a peticion. Favor de notificar al Departamento "City Clerk". Para mayor informacion, favor de marcar el numero 350-7602.

WORKSHOP:

A. 5:30 P.M. Joint City Council and Planning Commission Workshop
   City Hall Executive Conference Room:
   (A) Active Transportation Plan Presentation (Director of Community Development Zai AbuBakar and Director of Engineering Ricardo Sandoval to present);
   (B) Agenda Review, and
   (C) City Manager Comments.

PUBLIC COMMUNICATION - CLOSED SESSION:

This is an opportunity for citizens to speak to the City Council for up to 5 minutes on the following Closed Session. The Mayor and City Council reserve the right to adjust this time limit based on the number of speakers who wish to address the Mayor and City Council.
A. Public Communications - Closed Session

CLOSED SESSION:

A. 6:00 P.M. CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATOR – PURSUANT TO GOVERNMENT CODE SECTION 54956.8.
Properties: APN #0191-162-36 through 38.
Located at the North-West Corner of Arrow Blvd. and Nuevo Avenue
Negotiating Parties: City of Fontana & New Legacy Corporation
Negotiator: David R. Edgar, Deputy City Manager
Under Negotiation: Price and Terms

CONFERENCE WITH REAL PROPERTY NEGOTIATOR – PURSUANT TO GOVERNMENT CODE SECTION 54956.8.
Properties: APN #0191-071-26. 8363 Sierra Avenue
Negotiating Parties: City of Fontana & Goma S. Darwish
Negotiator: David R. Edgar, Deputy City Manager
Under Negotiation: Price and Terms

CALL TO ORDER/ROLL CALL:

A. 7:00 P.M. Call the Meeting to Order

INVOCATION/PLEDGE OF ALLEGIANCE:
Pastor Marlon Jackson, Loveland Church/Pledge of Allegiance

PROCLAMATIONS:

A. Prostate Cancer Awareness Month
Mayor Warren and City Council to Proclaim the Month of September as Prostate Cancer Awareness Month (Mayor Warren to present).

B. National Senior Center Month
Mayor Warren and City Council to Proclaim September 2017 as National Senior Center Month (Community Services Supervisor Tiffany Starks to accept).

C. National Public Lands Day
Mayor Warren and City Council to Proclaim September 30, 2017 as National Public Lands Day (Community Services Supervisor Rob Bock to accept).

SPECIAL PRESENTATIONS:

A. Check Presentation from Southern California Edison
Mayor Warren and City Council to accept a $1,000 check from Southern California Edison for the Explorer Leadership Program and Fontana Leadership Intervention Program (Southern California Edison Government Affairs Representative Jennifer Menjivar-Shaw to present).
PUBLIC COMMUNICATIONS:

This is an opportunity for citizens to speak to the City Council for up to 5 minutes on items not on the Agenda, but within the City Council's jurisdiction. The Mayor and City Council reserve the right to adjust this time limit based on the number of speakers who wish to address the Mayor and City Council. The Council is prohibited by law from discussing or taking immediate action on non-agendized items.

A. Public Communications

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 discussion. Does any member of the public wish to address the City Council regarding any item on the Consent Calendar before the vote is taken?

A. Approval of Minutes

Approve the Minutes of the August 22, 2017 Regular City Council Meeting.

B. Adoption of Ordinance No.1766

Second Reading/ Adopt Ordinance No. 1766 an Ordinance of the City of Fontana approving the Third Amendment to the Citrus Heights North Development Agreement between the City of Fontana and SC Fontana Development Company, LLC.

C. Approve a Traffic Signal Reimbursement Agreement and a Traffic Signal Maintenance Agreement with the City of Rancho Cucamonga - East Avenue and Miller Avenue

1. Approve and authorize the City Manager to execute a Traffic Signal Reimbursement Agreement with the City of Rancho Cucamonga for the installation of a new traffic signal at East Avenue and Miller Avenue.

2. Appropriate $90,000.00 from Local Measure I Fund No. 246 to Project No. 3319.

3. Approve and authorize the City Manager to execute a Traffic Signal Maintenance Agreement with the City of Rancho Cucamonga for the ongoing maintenance of shared traffic signals.

D. Authorize a Cooperative Agreement between the City of Fontana and San Bernardino County for Cherry Avenue Street Improvements

1. Approve a Cooperative Agreement between the City of Fontana and San Bernardino County to construct street improvements on Cherry Avenue between Valley Boulevard and Whittram Avenue in the amount of $1,134,625.

2. Authorize the City Manager to execute the Cooperative Agreement between the City of Fontana and San Bernardino County for street improvements.
E. Final Acceptance of the Cured In Place Pipe (CIPP) Spot Repair Project SB-20-PW-16

1. Final Acceptance of the construction contract for the Cured In Place Pipe (CIPP) Spot Repair Project SB-20-PW-16 in the amount of $165,407.51.

2. Authorize the Public Works Director to file a Notice of Completion and release the 5% retention.

Approve Consent Calendar Items as recommended by staff.

PUBLIC HEARINGS:

To speak on Public Hearing Items, fill out a card at the microphone stand indicating favor or opposition and give it to the City Clerk. Each person will be allowed 5 minutes to address the Council. If you challenge in court any action taken concerning a Public Hearing item, 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 at, or prior to, the Public Hearing.

All Public Hearings will be conducted following this format:

(a) hearing opened  (e) oral - favor
(b) written communication  (f) oral - opposition
(c) council/staff comments  (g) hearing closed
(d) applicant comments (applicant not limited to 5 minutes)

A. Electric Fence Ordinance Amendment (Master Case [MCN] No. 13-001, Zoning Code Amendment [ZCA] No. 16-004 and Specific Plan Amendment [SPA] No. 15-003)

1. Determine that ZCA No. 16-004 and SPA No. 15-003 will not have a significant effect on the environment pursuant to the California Environmental Quality Act (CEQA) 15061(b)(3) (Review of Exemption), and direct staff to file a Notice of Exemption;

2. Waive further reading of and introduce Ordinance No. _____, an Ordinance of the City of Fontana approving ZCA No. 16-004, amending the Zoning and Development Code (Chapter 30) for Light Industrial (M-1) and General Industrial (M-2) zoning districts and permitting electric fences in the General Commercial (C-2) zone subject to the electric fence development standards and amending Miscellaneous Provisions and Offenses (Chapter 16) text of the Fontana Municipal Code in regard to electric fences, and that the reading of the title constitutes the first reading thereof.

3. Waive further reading of and introduce Ordinance No. _____, an Ordinance of the City of Fontana approving SPA No. 15-003, amending the Southwest Industrial Park Specific Plan (SWIP) text in regard to electric fences for the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, and Jurupa South land use districts of the SWIP Specific Plan, and that the reading of the title constitutes the first reading thereof.
UNFINISHED BUSINESS:

A. Second Reading – Council Election Districts Ordinance

That the Mayor and City Council have a Second Reading/Adopt Ordinance No. 1767
of the City Council of the City of Fontana, California, adding a new Section 2-42 to
Article II, Chapter 2 of the Fontana Municipal Code to change the City’s Electoral
System from at-large to by-district elections with respect to electing City Council
members and maintaining an elective Mayor, establishing District boundaries and
scheduling elections within the Districts.

NEW BUSINESS:

A. Adopt an Ordinance Establishing New Speed Reduction (Speed Limit)
Zones

Waive further reading of and introduce Ordinance No. ____, establishing new speed
reduction (speed limit) zones within the City of Fontana, and that the reading of the title
constitutes the first reading thereof.

ELECTED OFFICIALS COMMUNICATIONS/REPORTS:

A. Elected Officials Communications/Reports

CITY MANAGER COMMUNICATIONS:

A. City Manager Communications

ADJOURNMENT:

A. To the 2017 League of California Cities Annual Conference in Sacramento,
California from September 13-15, 2017, then to the next Regular City Council
Meeting on Tuesday, September 26, 2017, with a workshop at 5:30 p.m. and the
Regular Meeting at 7:00 p.m. in the Grover W. Taylor Council Chambers at 8353
Sierra Avenue, Fontana, California.
ARTIST SHOWCASE:

A. 5:30 P.M. Artist Showcase

The work of Artist Stuart Fingerhut was presented at 5:30 p.m. in the Grover W. Taylor Council Chambers and Foyer.

CALL TO ORDER/ROLL CALL:

A. 7:00 P.M. Call the Meeting to Order

The Regular Meeting of the Fontana City Council was held on Tuesday, August 22, 2017 in the Grover W. Taylor Council Chambers at 8353 Sierra Avenue, Fontana, California. Mayor Warren called the meeting to order at 7:04 p.m.

ROLL CALL:
Present: Mayor Warren, Mayor Pro Tem Sandoval and Council Members Roberts, Tahan and Armendarez.

Absent: None.

INVOCATION/PLEDGE OF ALLEGIANCE:
Following the Invocation by Council Member Armendarez, the Pledge of Allegiance was led by Mayor Pro Tem Sandoval.

SPECIAL PRESENTATIONS:

A. Artist Recognition

Mayor Warren and the City Council recognized Stuart Fingerhut as the artist in the Artist Showcase. Community Services Coordinator Ana Casillas presented the recognition. Mr. Fingerhut was present to accept.

B. Fontana Days Run Sponsors

Mayor Warren and City Council recognized sponsors of the 2017 Annual Fontana Days Run: Community Services Coordinator Bianca Morales presented the recognition. Fontana Water Company and the United States Army representatives were present to
accept.

C. Police Department May 2017 Employee of the Month

Mayor Warren and the City Council recognized Officer Bradley Carlson as the Police Department's May 2017 Employee of the Month. Chief Ramsey highlighted his accomplishments. Officer Carlson was present to accept.

PUBLIC COMMUNICATIONS:

A. Public Communications

Deborah Hall Lindsey invited the City Council and the Community to the Unity in Community Day, September 16, 2017, 11:00 a.m. to 3:00 p.m. Ms. Lindsey thanked the City Council for being supportive of the event.

Mana Rizvi announced that Assembly Member Eloise Gomez-Reyes had a press conference on AB523, Equity in Clean Energy Investment Bill scheduled on Friday, August 25, 2017, from 12:00 p.m. to 1:30 p.m. at the Mary Vagle Nature Center.

Amparo Miramontes thanked the City Council for welcoming a Girl Scout Member of Troop #1801 to speak at a previous meeting. Ms. Maramontes stated that Girl Scouts are looking for a location to host Girl Scout Founder, Juliet Gordon Low's birthday on October 31, 2017.

Fran Givens spoke on the sidewalk construction by the railroad tracks. Ms. Givens also spoke on changes to Social Security numbers.

Kareem Gongora announced his candidacy to fill a vacant seat on the Fontana Unified School District Board of Education in a special election.

Glenda Barillas requested information on events planned for September 11, 2017. Ms. Barillas announced a Lunch and Learn Event, to be held on August 23, 2017, 12:30 p.m. to 2:30 p.m. at the Joslyn Senior Center in Redlands.

Danny Marquez spoke on the National Day of Service event honoring 9/11 to be held on September 9, 2017, from 10:00 a.m. to 2:00 p.m. at the Fontana Senior Center. Mr. Marquez spoke on preparing care packages and thanked all those that donated.

CONSENT CALENDAR:

ACTION: Motion was made by Council Member Roberts, seconded by Council Member Armendarez, and passed unanimously by a vote of 5-0 to approve Consent Calendar Items "CC-A" through "CC-D". (AYES: Warren, Sandoval, Roberts, Tahan, and Armendarez: NOES: None)

A. Approval of Minutes

Approve the Minutes of the July 10, 2017 Adjourned Regular City Council Meeting and the August 8, 2017 Regular City Council Meeting.
B. Adoption of Proposed Resolution Ratifying the Fontana Fire Protection District’s Fire Code


C. Award of Contract for Providing Fuel for City-Owned Vehicles and Equipment

Approve and authorize the Purchasing Office award of contract to Nuckles Oil Company DBA Merit Oil Company for fuel for City-owned vehicles and equipment based upon a "piggyback" on San Bernardino County’s Gasoline and Diesel Fuel Contract. The term of the contract will be for two years with three one-year extensions at the City’s sole discretion.

D. Resolution Ratifying 2017-2020 Memorandum of Understanding for the Teamsters Local 1932 Yard Bargaining Unit and the Associated Salary Table

Adopt Resolution No. 2017-062, of the City Council of the City of Fontana, ratifying the 2017 – 2020 Memorandum of Understanding between the City and the Teamsters Local 1932 Yard Bargaining Unit, and the associated Salary Table.

PUBLIC HEARINGS:

A. Third Amendment to the Citrus Heights North Development Agreement (Agreement No. 17-001)

Mayor Warren opened Public Hearing Item PH-A.

Community Development Director Zai AbuBakar and Planning Manager Orlando Hernandez provided the staff report.

No one spoke in favor or opposition.

The Public Hearing was closed.

ACTION: Motion was made by Council Member Armendarez, seconded by Council Member Tahan, and passed by a vote of 5-0 to adopt Public Hearing Item “PH-A” (AYES: Warren, Sandoval, Roberts, Tahan and Armendarez; NOES: None) as follows:

1. Determine that the proposed Ordinance and the proposed Agreement have been determined not to have a significant effect on the environment pursuant to the California Environmental Quality Act (CEQA) 15061(b)(3) (Review of Exemption) and qualifies for an Exemption; and,

2. Waive further reading of and introduce Ordinance No. 1766, an Ordinance of the City of Fontana approving the Third Amendment to the Citrus Heights North Development Agreement between the City of Fontana and SC Fontana Development Company, LLC; and that the reading of the title constitutes the first reading thereof.
B. Council Election Districts Ordinance

Mayor Warren opened Public Hearing Item PH-B.

Deputy City Manager David Edgar provided the staff report.

Mayor Pro Tem Sandoval asked if the company that prepared the district maps were available to answer questions as to why the City was split in half down Sierra Avenue in Draft No. 6. Mayor Pro Tem Sandoval stated he requested they be present, and needed that question answered before the vote tonight.

Staff stated they will ask National Demographics for the answer and the information will be provided at the second reading.

Council Member Tahan asked if the recommendations for the draft map options were prepared by the consultant.

City Attorney Ballinger stated that the consultant prepared different drafts and presented them to the City Council in Workshops and Public Hearings and recommended all of the drafts.

Council Member Tahan asked if the recommendations for which election and which districts was done by the consultant.

Mayor Pro Tem Sandoval asked how the consultant came up with the criteria on the three drafts and options.

City Manager Hunt stated that the City Council approved a resolution in February which outlined the criteria to use for the drafting of the maps, and based on the criteria and public meetings, the consultant came up with the maps.

Mayor Pro Tem Sandoval asked how the consultant came up with the options and when the elections should be held.

City Manager Hunt stated that the consultant came up with these options for the elections based on how the law works.

Mayor Pro Tem Sandoval quoted criteria on elections as follows: “District’s borders would respect previous choices of city voters by avoiding creating a head to head contest between Council members previously elected by voters of the city”. Mayor Pro Tem Sandoval stated that Draft 3 includes a head to head contest between Sandoval and Amendarez.

Mayor Warren asked if there were any more questions.

Mayor Pro Tem Sandoval stated he was still waiting for an answer.
Mayor Warren stated that he will not be getting an answer tonight.

Mayor Warren stated that Draft 6 was voted on at the last meeting and the ordinance is moving forward.

Mayor Pro Tem Sandoval stated that all draft maps that were drawn were supposed to follow the criteria by the City Council, and that draft map No. 3 should never have been submitted for consideration.

Mayor Warren made note of the question and asked staff to get back to the City Council.

Amparo Miramontes spoke on being disappointed that her group’s public comments were not taken into consideration. Ms. Miramontes requested the City Council table the item until all of the data was reviewed.

Kareem Gongora spoke on being disappointed that National Demographic, a company that works with other municipalities and school districts, did not have a representative available to answer questions.

Glenda Barillas spoke on being disappointed with the results of the last meeting and feeling shut down and unheard. Ms. Barillas spoke on the hours taken to draw up alternative maps that were not considered.

The Public Hearing was closed.

Council Member Tahan asked Mayor Warren, Council Member Armendarez and Council Member Roberts if they were comfortable with the map as drawn, and stated he was trying to understand the logic behind the motion.

Mayor Pro Tem Sandoval spoke on the minor changes between the drafts and the head to head contest in the maps; this is not good for Fontana. All three maps should be thrown out and the maps redrawn to avoid one person controlling the City.

Mayor Warren spoke on everyone not being happy and this issue being forced upon the City of Fontana; the law was followed and it is what is best for this community.

Council Member Tahan asked City Attorney Ballinger, if based on the report and the A through G elements, item F states “not to have head to head contest between Council Members” if the City was in compliance.

City Attorney Ballinger stated that those items are listed as factors, they are not hard and fast items that absolutely have to be met. Those are things the council should consider. It is ultimately up to the Council to determine how to weigh those various factors.

Council Member Tahan asked City Attorney Ballenger if there were any legal issues with the process, the maps, and how they were drawn.

City Attorney Ballinger stated that there were no legal issues.
Mayor Pro Tem Sandoval stated he is not against districts but is against the way the maps were drawn as they do not represent the people.

Council Member Armendarez stated he was against districts and believes full representation and accountability was dealt with in the selection of these districts.

Mayor Warren spoke on everyone in the Council Chambers being respectful of others.

**ACTION:** Motion was made by Council Member Armendarez, seconded by Council Member Roberts, and passed by a vote of 3-2 to adopt Public Hearing Item “PH-B” (AYES: Warren, Roberts, Armendarez; NOES: Sandoval, Tahan) as follows:

That the Mayor and City Council;

1. Conduct a Public Hearing;

2. Waive further reading and introduce Ordinance No. 1767 of the City Council of the City of Fontana, California, adding a new Section 2-42 to Article II, Chapter 2 of the Fontana Municipal Code to change the City’s Electoral System from at-large to by-district elections with respect to electing City Council members and maintaining an elective Mayor, establishing District boundaries, scheduling elections within the Districts, and that the reading of the title constitutes the first reading thereof; and

3. Find that pursuant to Section 15320 of the Guidelines for the Implementation of the California Environmental Quality Act ("CEQA"), further review under CEQA is not required because this ordinance establishing district-based elections consists of a change in the organization or reorganization of a local governmental agency where the change does not change the geographical area in which previously existing powers are exercised. Therefore, a Notice of Exemption will be filed with the County Clerk of the County of San Bernardino.

**ELECTED OFFICIALS COMMUNICATIONS/REPORTS:**

**A. Elected Officials Communications/Reports**

City Treasurer Janet Koehler-Brooks wished City Manager Ken Hunt a happy birthday.

City Clerk Tonia Lewis invited everyone to a fundraiser on August 23, 2017, 11:00 a.m. to 11:00 p.m. at Chili’s restaurant to benefit the Jr. FLIP program.

City Clerk Tonia Lewis sent well wishes to Ken Hunt’s son who survived a traffic accident; and spoke on her grandson recently being in a traffic accident and stated that he is also doing fine.

City Clerk Tonia Lewis sent condolences to the Boyles family.

City Clerk Tonia Lewis wished City Manager Ken Hunt a happy birthday.

Council Member Armendarez announced he attended the SBC Water Conference on
August 11, 2017.

Council Member Tahan reminded everyone to be patient while driving with the start of the new school year.

Council Member Roberts expressed his condolences to former Mayor Gary Boyles on the passing of his wife.

Mayor Pro Tem Sandoval announced he attended the annual Water Conference in Ontario on August 11, 2017.

Mayor Pro Tem Sandoval asked why the city is not having a 9/11 ceremony this year.

City Manager Hunt stated that the City remembrance of 9/11 will be held every five years.

Mayor Pro Tem Sandoval asked about the status of the sidewalk at the railroad crossing at Juniper Avenue and Cypress Avenue.

City Manager Hunt replied that preparation work for the intersection was done and the project will be completed by the end of the year.

Mayor Pro Tem Sandoval requested an update on the Miller Amphitheater.

City Manager Hunt stated that construction will be completed in January and a grand opening in May 2018.

Mayor Pro Tem Sandoval requested an update on the Emergency Operations Center.

City Manager Hunt stated that it will be completed in December.

Mayor Warren thanked the public for supporting the City Council’s efforts.

Mayor Warren announced she attended the United States Conference of Mayors Leadership Conference.

Mayor Warren spoke on the city coming a long way and is working on ways to better communicate those great efforts.

Mayor Warren spoke on the success of Fontana Walks and commended staff for their work.

Mayor Warren spoke on the auditions for the Fontana Youth Theater.

CITY MANAGER COMMUNICATIONS:

A. City Manager Communications

City Manager Hunt stated that tonight’s meeting will be adjourned to the Global City Teams Challenge Expo from August 28-29, 2017, in Washington, D.C.
City Manager Hunt congratulated Senior Planner Orlando Hernandez on his promotion to Planning Manager

ADJOURNMENT:

A moment of silence was held for Jolene Boyles and Joyce Fairman.

The City Council meeting adjourned in memory of Jolene Boyles and Joyce Fairman at 8:38 p.m. to the Global City Teams Challenge Expo from August 28-29, 2017, in Washington D.C.; and to the next Regular City Council Meeting which will be held on Tuesday, September 12, 2017, with a Workshop at 5:30 p.m. in the City Hall Executive Conference Room and the Regular Meeting at 7:00 p.m. in the Grover W. Taylor Council Chambers located at 8353 Sierra Avenue, Fontana, California.

Ysela Aguirre
Recording Secretary

THE FOREGOING MINUTES WERE APPROVED BY THE CITY COUNCIL ON THE 12TH DAY OF SEPTEMBER 2017

Tonia Lewis
City Clerk
ACTION REPORT
September 12, 2017

FROM: Department of Community Development
SUBJECT: Adoption of Ordinance No.1766

RECOMMENDATION:
Second Reading/ Adopt Ordinance No. 1766 an Ordinance of the City of Fontana approving the Third Amendment to the Citrus Heights North Development Agreement between the City of Fontana and SC Fontana Development Company, LLC.

COUNCIL GOALS:
* To create a team by ensuring commissions work within clear guidelines to achieve Council goals.

DISCUSSION:
Ordinance No. 1766 was introduced by a vote of 5-0 at the August 22, 2017, Regular City Council Meeting.

FISCAL IMPACT:
None

MOTION:
Approve staff recommendation.

SUBMITTED BY:

[Signature]
David R. Edgar
Deputy City Manager

APPROVED BY:

[Signature]
Kenneth R. Hunt
City Manager

ATTACHMENTS:

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<td>Ordinance No 1766</td>
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<td>Exhibit A - Ordinance No. 1766 - Development Agreement</td>
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ORDINANCE NO. 1766

AN ORDINANCE OF THE CITY OF FONTANA, CALIFORNIA, APPROVING THIRD AMENDMENT TO THE CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FONTANA, AND SC FONTANA DEVELOPMENT COMPANY LLC.

WHEREAS, the City Council ("City Council") of the City of Fontana ("City") is authorized by California Government Code sections 65864 et seq. and section 30-102 of the City's Development Code ("Development Code") to enter into an agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property; and

WHEREAS, City has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and ensure that appropriate measures to enhance and protect the environment are achieved; and

WHEREAS, City is authorized to amend the agreement pursuant to Section 2.5 of the Agreement and Section 65868 of the Government Code; and

WHEREAS, as of July 1, 2017, only 520 building permits for DU's in the Project of the 1154 DU's permitted by the agreement had been issued by the City due to the severe economic recession and downturn in the San Bernardino County real estate market that impacted the project for a number of years.

WHEREAS, the best interests of the citizens of the City of Fontana and the public health, safety and welfare will be served by extending the current Term of the agreement for an additional six (6) years; and

WHEREAS, the City has determined that there exists no uncured default by developer under the agreement as set forth in Section 2.3(ii) of the agreement.

WHEREAS, City has found that the third amendment to the Citrus Heights North Development Agreement attached hereto as Exhibit A and incorporated herein by reference ("Development Agreement") is consistent with City's General Plan and it has been reviewed and evaluated in accordance with section 30-102 of the City Development Code; and

WHEREAS, City has determined that by extending the Development Agreement:
   (i) City will promote orderly growth and quality development on the Property in accordance
Ordinance No. 1766

with the goals and policies set forth in the General Plan and (ii) City will benefit from increased employment, commercial and recreational opportunities created by the Project for residents of the City; and

WHEREAS, on August 22, 2017, the City Council introduced this Ordinance through a first reading of this Ordinance; and

WHEREAS, the City has determined that this Third Amendment will not result in any significant effects on the environment not previously analyzed in the Project’s EIR (SCH #2003111125) and is not a “Project” as defined in Public Resources Code Section 21065 of the California Environmental Quality Act (“CEQA”), and has determined that all requirements of CEQA have been met with respect to this Amendment.

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

Section 1. Pursuant to California Government Code sections 65865 et seq., the City Council hereby approves the Third Amendment to the Citrus Heights North Development Agreement, a copy of which is on file with the City Clerk and incorporated by reference herein, entitled "Development Agreement between SC Fontana Development Company LLC., and the City of Fontana".

Section 2. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds this Ordinance promotes the public health, safety and welfare of the community because the Development Agreement will enable needed public improvements at the Property and the economic development of the Property will benefit the citizens of the City.

Section 3. The City Council hereby incorporates by reference the Recitals set forth herein and adopts those recitals as its own as though fully set forth in this Ordinance. Pursuant to California Government Code section 65867.5(b), and based on the entire record before the City Council, including all written and oral evidence presented to the City Council, the City Council hereby finds that the Development Agreement is consistent with the General Plan because the Development Agreement will result in the development of the Property at the intensity and density allowed under the General Plan and with the restrictions and standards set forth in the City's Municipal Code and the Development Agreement.

Section 4. The City Clerk shall cause to be recorded with the San Bernardino County Recorder a copy of the executed Development Agreement at the time and in the manner provided for in the DA.
Ordinance No. 1766

Section 5. The proposed Ordinance and the proposed Agreement have been determined not to have a significant effect on the environment pursuant to the California Environmental Quality Act (CEQA) 15061(b)(3) (Review of Exemption) and qualify for an Exemption. This proposal will extend the Citrus Heights North Development Agreement for an additional six (6) years from September 2017 to September 2023. The agreement does not permit specific development or indicate the placement of physical buildings.

Section 6. This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of the fifteen (15) days from the passage thereof, the Ordinance or a summary of the Ordinance shall be published at least once in the Herald News, a newspaper of general circulation in the City of Fontana. Thereafter this Ordinance shall be in full force and effect.

APPROVED and ADOPTED this 22nd day of August 2017.

READ AND APPROVED AS TO LEGAL FORM:

________________________
City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting on the 22nd day of August, 2017, and was finally passed and adopted not less than five days thereafter on the 12th day of September, 2017 by the following vote to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

________________________
City Clerk of the City of Fontana

________________________
Mayor of the City of Fontana
Ordinance No. 1766

ATTEST:

______________________________
City Clerk
EXHIBIT "A"
DEVELOPMENT AGREEMENT

[to be attached]
CITRUS HEIGHTS NORTH
DEVELOPMENT AGREEMENT

A STATUTORY DEVELOPMENT AGREEMENT

between

CITY OF FONTANA
a California municipal corporation

and

SC FONTANA DEVELOPMENT CORPORATION,
a California corporation
("Developer")

and

CITRUS HEIGHTS NORTH HOLDING COMPANY, LLC,
a Delaware limited liability company
("Owner")
DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into effective on the date defined in Section 1.1.12 below as the "Effective Date" by and between the City of Fontana (hereinafter "CITY"), and SC Fontana Development Corporation, a California corporation, (hereinafter "DEVELOPER"), and Citrus Heights North Holding Company, LLC, a Delaware limited liability company ("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 owns the real property which is the subject of this Agreement and DEVELOPER has an equitable interest in that real property (the "Property"); and 

WHEREAS, DEVELOPER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with Section 65864 et seq. of the Government Code and the rules and regulations of CITY; and 

WHEREAS, OWNER has agreed to the recordation of this Agreement against the Property; and 

WHEREAS, CITY acknowledges that OWNER and DEVELOPER intend that DEVELOPER shall perform all of the obligations under this Agreement but that OWNER shall, if it elects to develop the Property, be responsible for the performance of any obligations under this Agreement as to any portion of the Property owned by OWNER which DEVELOPER fails to perform; and 

WHEREAS, all of the rights and benefits of the Agreement shall inure to the benefit of the Property and to the OWNER(s) thereof and their successors-in-interest, including DEVELOPER. 

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 of Fontana and the public health, safety and welfare will be served by entering into this Agreement; and 

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement through the certification of that certain Environmental Impact Report # 2003111125 ("EIR"); and
WHEREAS, this Agreement and the Project are consistent with the Fontana General Plan and any Specific Plan applicable thereto; 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, DEVELOPER 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.

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 Fontana, a municipal corporation and general law city.

1.1.3 "City Council" means the City Council of the CITY.

1.1.4 "Condominium" means an estate in real property as defined in Civil Code Sections 783 and 1351(f); Condominium units as defined in Civil Code Section 1351(f) are DU's as defined in this Agreement.

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

1.1.6 "Development Approvals" mean 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) conditional use permits, public use permits and site plans;
(d) zoning; and
(e) grading and building permits.

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

1.1.8 "Development Impact Fee" means a monetary exaction other than a tax or special assessment, whether 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, but does not include fees specified in Government Code Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864 of Chapter 4 of the Government Code), or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). "Development Impact Fee" expressly excludes processing fees and charges of every kind and nature 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. For purposes of this Agreement, Development Impact Fees include those fees listed in Exhibit "E" attached hereto.

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

1.1.10 "DEVELOPER" means SC Fontana Development Corporation, a California corporation, and its successor in interest to all or any part of the Property.

1.1.11 "DU's" means single-family and Condominium/townhouse residential dwelling units, including detached and attached units.

1.1.12 "Effective Date" means the date that is 31 days following the date that this Agreement is approved by the City by final action of the City Council.

1.1.13 "Existing Development Approvals" mean 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 Development Approvals that are a matter of public record on the Effective Date.

1.1.14 "Existing Land Use Regulations" mean all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations include the Regulations incorporated herein as Exhibit "D" and all other Regulations that are a matter of public record on the Effective Date.

1.1.15 "Frontage" means those portions of the Specific Plan located adjacent to dedicated or to be dedicated public roads; "Owner Frontage" means all of the Frontage except the Frontage within Planning Areas 5, 6A, 6B, and 12.

1.1.16 "Land Use Regulations" mean all ordinances, resolutions, codes, rules, regulations and official written 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, the maximum height and size of proposed 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, as modified or supplemented by the Existing Development Approvals. "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 rights and interests that provide for the use of or the entry upon public property; or
(e) the exercise of the power of eminent domain.

1.1.17 "Lot" means a legal subdivided lot.

1.1.18 "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.

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

1.1.20 "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.

1.1.21 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement excluding Planning Areas 5 and 12.

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

1.1.23 "Specific Plan" means the Citrus Heights North Specific Plan approved August 17, 2004 by the City. Planning Areas 5 and 12 as shown in the Specific Plan are not owned or controlled by OWNER or DEVELOPER and are not a part of this Agreement; provided City agrees that if City acquires title to Planning Area 5, City agrees that Planning Area 5 will be developed by City exclusively for park purposes consistent with the Park Complex described in Section 4.2.4 below.

1.1.24 "Subsequent Development Approvals" means all Development Approvals approved by the City subsequent to the Effective Date in connection with development of the Property.

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

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

- Exhibit "A" -- Legal Description of Property.
- Exhibit "B" -- Map of Property
- Exhibit "C" -- Existing Development Approvals.
- Exhibit "D" -- Existing Land Use Regulations.
- Exhibit "E" -- Impact Fee Schedule/Fee Credits.
- Exhibit "F" -- Description of Park/Recreation Dedication.
- Exhibit "F-1" -- Park Offsite Improvements/Park Improvement Credit.
- Exhibit "G" -- Project Amenities
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/Option of Property.** OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, and DEVELOPER represents and covenants that it has an option to purchase all or a portion of the Property.

2.3 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years thereafter. This Agreement shall extend without modification or amendment of this Agreement for one (1) additional five (5) year period following the expiration of the initial five (5) year term upon the occurrence of both of the following:

(i) DEVELOPER shall have applied for and obtained building permits for at least 599 residential DU's in accordance with the Development Approvals; and

(ii) There exists no uncured default of which DEVELOPER has been given notices as to this Agreement or any other agreement or condition of approval relative to the development of the Property.

2.4 **Assignment.**

2.4.1 **Right to Assign.** OWNER and DEVELOPER 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, 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 conditions precedent:

(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 and DEVELOPER shall notify CITY, in writing, of such sale, transfer or assignment and shall provide CITY with 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 and DEVELOPER under this Agreement.

Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER and DEVELOPER 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.

2.4.2 Release of Transferring OWNER or DEVELOPER. Notwithstanding any sale, transfer or assignment, a transferring OWNER or DEVELOPER shall continue to be obligated under this Agreement as to that portion of the Property sold, transferred or assigned unless such transferring OWNER OR DEVELOPER is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring OWNER or DEVELOPER of the following conditions:

(a) Such OWNER or DEVELOPER no longer has a legal or equitable interest in all or any part of the Property sold.

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

(c) Such OWNER or DEVELOPER 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 such OWNER or DEVELOPER to secure performance of its obligations hereunder.

2.4.3 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.

2.4.4 Partial Release of Purchaser, Transferee or Assignee of Lot. A purchaser, transferee or assignee of a Lot, that has been finally subdivided as provided for in the Development Plan and for which a site plan for development of the Lot has been finally approved pursuant to the Development Plan, may submit a request, in writing, to CITY to release said Lot from the obligations under this Agreement relating to all other portions of the Property. Within thirty (30) days of such request, CITY shall review, and if the above site plan condition is satisfied shall approve the request for release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.4 shall cause, or otherwise effect, a release of OWNER or DEVELOPER from its duties and obligations under this Agreement as to the remainder of the Property (exclusive of such Lot).

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The restrictions and requirements of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any (i) Lot that has been finally subdivided and/or any (ii) Condominium unit that is described on a condominium plan approved by the City as defined in Civil Code Section 1351(e) (the "Condominium Plan") individually (and not in "bulk") 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 or Condominium unit and such Lot or Condominium unit 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;

(b) The Condominium unit is described on a Condominium Plan approved by the City 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,

(c) A final certificate of occupancy or similar certificate has been issued for a building on the Lot or for the Condominium unit, 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 by written consent of all parties or their respective successors or assigns with respect to their respective portions of the Property in the manner provided for in Government Code Section 65868. This provision shall not limit any remedy of CITY or DEVELOPER as provided by this Agreement.

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, without limitation, 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 that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement. Upon such termination, any Development Impact Fees paid pursuant to Section 4.2 of this Agreement by DEVELOPER to CITY for residential units on which construction has not yet begun shall be refunded to DEVELOPER 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 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; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to CITY:

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: City Manager

with a copy to:

Best Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92502
Attn: City Attorney

If to DEVELOPER:

SC Fontana Development Corporation
Attn: John M. Goodman
P. O. Box 670
Upland, CA 91785-0670
1156 N. Mountain Avenue
Upland, CA 91786

with a copy to:

Lewis Operating Corp.
Attn: W. Bradford Francke, Esq.
P. O. Box 670
Upland, CA 91785-0670
1156 N. Mountain Avenue
Upland, CA 91786
If to OWNER:

Citrus Heights North Holding Company, LLC
Attn: Richard A. Lewis
P. O. Box 670
Upland, CA 91785-0670
1156 N. Mountain Avenue
Upland, CA 91786

with a copy to:

North Mountain Corporation
Attn: Kenneth P. Corhan, Esq.
P. O. Box 670
Upland, CA 91785-0670
1156 N. Mountain Avenue
Upland, CA 91786

(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, DEVELOPER 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 expressly in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, the design, improvement, and construction standards applicable to development of the Property, and provisions for reservation and dedication of land for public purposes and Development Exactions shall be those set forth in the Development Plan. Without limiting the foregoing, CITY and DEVELOPER agree that the maximum density permitted for the Property is 1,127 residential dwelling units as provided in the Citrus Heights North Specific Plan,

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided expressly under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies of the City 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 its discretion in accordance with the Development Plan, and as provided by this Agreement including, but not limited to, the Reservations of Authority. CITY
shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters.

3.3 **Timing of Development.** The parties acknowledge that DEVELOPER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors that are not within the control of DEVELOPER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that DEVELOPER shall have the right to develop the Property in such order and at such rate and at such times as DEVELOPER, in its sole and absolute discretion deems appropriate, subject only to any timing or phasing requirements set forth in the Development Plan or the Phasing Plan set forth in Section 3.4.

3.4 **Phasing Plan.** Development of the Property shall be subject to all timing and phasing requirements established by the Development Plan.

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 DEVELOPER finds that a change in the Existing Development Approvals is necessary or appropriate, DEVELOPER 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, without limitation, 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 but instead require only the approval of the City's Community Development Director 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 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 modify the Development Exactions; 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 following Subsequent Land Use Regulations shall apply to the development of the Property.

(a) Processing fees and charges of every kind and nature 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.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations governing construction standards and specifications including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code that are applied uniformly and on a City-wide basis to all development projects of a similar type as the Project.

(d) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exaction shall be applicable to development of the Property unless such Development Exaction is applied uniformly to development, either throughout the CITY or within a defined area of benefit that includes the Property. No such subsequently adopted Development Exaction shall apply if its application to the Property would prevent or increase the cost of development of the Property for the uses and to the density or intensity of development set forth in the Development Plan. In the event any such subsequently adopted Development Exaction fulfills the same purposes, in whole or in part, as the fees set forth in Section 4 of this Agreement, CITY shall allow a credit against such subsequently adopted Development Exaction for the fees paid under Section 4 of this Agreement to the extent such fees fulfill the same purposes.

(e) Regulations that may be in conflict with the Development Plan but that are reasonably necessary to protect the public health and safety of the residents of the Project or immediate community. To the extent possible, any such regulations shall be applied and construed so as to provide DEVELOPER with all of the rights and assurances provided under this Agreement.

(f) Regulations that are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(g) Regulations that are in conflict with the Development Plan provided DEVELOPER has given written consent to the application of such regulations to development of the Property.

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.

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 that 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 that cannot be restricted by contract.

3.7 Public Works. If DEVELOPER is required by this Agreement to construct any
improvements that will be dedicated to CITY or any other public agency upon completion, and if
required by applicable laws to do so, DEVELOPER 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.

3.8 Provision of Real Property Interests by CITY. In any instance where DEVELOPER is
required to construct any public improvement on land not owned by DEVELOPER, DEVELOPER
shall at its sole cost and expense provide or cause to be provided, the real property interests
necessary for the construction of such public improvements. In the event DEVELOPER is unable,
after exercising commercially reasonable efforts, for a period of ninety (90) days, to acquire the real
property interests necessary for the construction of such public improvements, and if so instructed by
DEVELOPER and upon DEVELOPER'S provision of adequate security for costs CITY may
reasonably incur, CITY shall negotiate the purchase of the necessary real property interests to allow
DEVELOPER to construct the public improvements as required by this Agreement and, if necessary,
in accordance with the procedures established by law, use its power of eminent domain to acquire
such required real property interests. DEVELOPER shall pay all costs associated with such
acquisition or condemnation proceedings. This Section 3.8 is not intended by the parties to impose
upon the DEVELOPER an enforceable duty to acquire land or construct any public improvements on
land not owned by DEVELOPER, except to the extent that the DEVELOPER elects to proceed with
the development of the Project, and then only in accordance with valid conditions consistent with the
Development Plan imposed by the CITY upon the development of the Project under the Subdivision
Map Act or other legal authority.

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.
3.10 **Tentative Tract Map Extension.** Notwithstanding the provisions of Section 66452.6 of the Government Code, no tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be granted an extension of time except in accordance with the Existing Land Use Regulations.

3.11 **Vesting Tentative Maps.** If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with development of the Property, is a vesting map under the Subdivision Map Act (Government Code Section 66410, et seq.) and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to DEVELOPER, then and to that extent the rights and protections afforded DEVELOPER under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

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 DEVELOPER 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 DEVELOPER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 **Development Impact Fees.**

4.2.1 **Amount and Components of Fee.** Subject to any fee credits set forth in Sections 4.2.3 and 4.2.5, DEVELOPER shall pay to the City the Development Impact Fees listed in Exhibit "E".

During the first five (5) years of the term of this Agreement, commencing as of the Effective Date, those Development Impact Fees set forth in Exhibit "E" shall not be increased with respect to this Project; provided DEVELOPER shall be subject to any increase to the IEUA (Inland Empire Utilities Agency) Fee imposed by IEUA. DEVELOPER shall not be required to pay any increase in such Development Impact Fees but shall benefit from any reduction in such Development Impact Fees during the five (5) year period; provided however, that DEVELOPER shall not be entitled to any refund or return of any such Development Impact Fees or portion thereof already paid. Upon expiration of the above-referenced five (5) year period, the DEVELOPER shall thereafter pay the amount of such Development Impact Fees legally adopted and in effect by the then-applicable City ordinance or resolution.

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 permits for each DU. Any of such Development Impact Fees may be paid in advance of the issuance of building permits for any or all of the DU’s within the Project whereupon the City may not impose any new, additional, or increased Development Impact Fees upon such DU for which the building permit was issued unless
such building permit expires and is not reissued or extended by City. No Development Impact Fees shall be payable for building permits issued prior to the Effective Date of this Agreement, but the fees required pursuant to Subsection 4.2.1 shall be paid prior to the re-issuance or extension of any building permit for a DU for which such Development Impact Fees have not previously been paid.

4.2.3 Project Park Requirement.

4.2.3.1 Quimby Fees/Park Credits. DEVELOPER currently contemplates the construction of (i) 579 single-family DU's for which DEVELOPER is required to pay Quimby Act Fees of $6,000 per single-family DU, and (ii) 548 Condominium/townhouse DU's for which DEVELOPER is required to pay Quimby Act Fees of $5,419.80 per Condominium/townhouse DU, for a total of $6,444,050.40 (the "Project Park Fees"). In consideration for City's approval of the Development Plan providing for the construction of up to 579 single-family DU's and 548 Condominium/townhouse DU's within the Property, and each Lot with minimum sizes in accordance with the Development Plan, DEVELOPER shall, (i) the next business day after the recordation of this Agreement or (ii) upon recordation of a parcel map to subdivide the Park Land (defined below), whichever is later, dedicate to City that 9.18-acre portion of the Property identified as Planning Area 6A in Exhibit "F" attached hereto (the "Park Land") for City's design and construction of a park complex (the "Park Complex") with amenities of the type generally described in the Specific Plan for which DEVELOPER shall receive a credit against the Project Park Fees equal to $100,000 per acre (the "Park Dedication Credit"), as set forth in Exhibit E for dedication of the Park Land. The City shall develop Planning Area 5 as part of the Park Complex if Planning Area 5 is acquired by the City as set forth in Paragraph 1.1.23 above.

4.2.3.2 Improvement Credits/Contribution Amount. DEVELOPER shall also receive credit against the Project Park Fees for those offsite improvements constructed by DEVELOPER to serve the Park Complex as described on Exhibit "F-1" the ("Park Offsite Improvements") in the amount set forth in Exhibit "F-1" (the "Park Improvement Credit"). The Park Improvement Credit shall be reasonably increased by City in the event additional Park Offsite Improvements are installed by Developer by written request of City. DEVELOPER shall also pay, in lump sum payments to City, the remaining balance of the Project Park Fees after deducting the Park Dedication Credit and Park Improvement Credit from the Project Park Fees (the "Contribution Amount"). Such Contribution Amount ($4,220,188.90 as currently identified in Exhibit "E") shall be paid as followed: (i) 50% within fifteen (15) days after the award by City of the contracts for construction of the Park Complex or a similar type of recreational facility at the same location and 50% upon commencement of construction of the Park Complex, but no later than City's issuance of the six hundredth (600th) building permit for the Project. In the event that a Mello Roos CFD is formed and funded for the Project, the Project Park Fees will be reduced by the amount of such financing allocable to improvements to the Park Complex. DEVELOPER shall not be entitled to any reimbursement or to any excess credits for the Park Complex if DEVELOPER develops less than 1,127 DU's. City agrees that the Contribution Amount shall not be increased, nor shall Owner or Developer otherwise be required to pay for any cost overruns of any kind in connection with the Park Complex.
4.2.4 Park Complex Design and Construction. The Park Complex shall be designed and constructed by CITY on the Park Land located within Planning Area 6A (and Planning Area 5 if acquired by the City and Planning Area 6B as provided in Section 4.4) of the Specific Plan. City shall use its best efforts to commence construction of the Park Complex within eighteen (18) months from the Effective Date. The Park Complex shall recognize, in some appropriate manner, the name of Ralph Lewis and Goldy Lewis. CITY and DEVELOPER shall engage in good faith negotiations immediately following execution of this Development Agreement for the purpose of developing a conceptual design ("Conceptual Design") of the Park Complex. Both parties will exercise their respective discretion reasonably in preparing and approving the Conceptual Design. DEVELOPER's dedication of the Park Land and payment of the Contribution Amount (collectively the "Project Park Payment") fully and completely satisfies DEVELOPER's Quimby Act Fee obligation imposed against the (i) first 579 single-family DU's and (ii) 548 Condominium/townhouse DU's constructed in the Project. In the event DEVELOPER develops any DU's in excess of 1,127 DU's (or if the mix and number of single-family DU's and Condominium/townhouse DU's changes resulting in an increase in the Project Park Fees), then DEVELOPER shall pay CITY's then current Quimby Act Fee for each of such excess DU's (or pay such increase in the Project Park Fees after the Project Park Payment is exhausted).

4.2.5 Credit/Excess Storm Drainage Credit. DEVELOPER shall be entitled to credit against the storm drain fees required pursuant to Subsection 4.2.1 for the dedication of land, the construction of improvements or the payment of fees as specifically set forth in Exhibit "E". Any excess storm drain construction credits (the "Excess Drainage Credits") may be applied by DEVELOPER as a credit against future impact fee obligations imposed by the City for other projects by DEVELOPER within any portion of the City, or by such home builders under contract with DEVELOPER within such project(s). Exhibit "E" assumes the construction of 1,127 DU's (579 single-family DU's and 548 Condominium/townhouse DU's). Notwithstanding the foregoing, CITY agrees, to reimburse DEVELOPER for any Excess Drainage Credits for the drainage improvements described in Exhibit "E" (the "Drainage Improvements") in accordance with the following procedure:

The City shall, within twenty-one (21) days after submission by DEVELOPER at various times, but not more frequently than monthly, of any and all invoice(s) for the Drainage Improvements with supporting documentation as required by this Agreement (the "Payment Request"), pay to DEVELOPER three-quarters (3/4) of the amount of each such Payment Request. The remaining one-quarter (1/4) of the amount of each such Payment Request shall be aggregated together with all other unpaid portions of previous Payment Requests and shall be paid to DEVELOPER on the date that is sixty (60) days after the substantial completion of the Drainage Improvements unless prior to the end of such sixty (60)-day period (the "Review Period") the City delivers written notice (the "Defect Notice") to DEVELOPER of any defect discovered by the City Engineer in the construction and completion of the Drainage Improvements. The Defect Notice must state with reasonable specificity the nature of the defect, the action that the City reasonably requires DEVELOPER to undertake to cure such defect, and the amount of the Drainage reimbursement which will be withheld by the City to insure the completion of such cure by DEVELOPER. In no event may such withheld amount be more than one hundred twenty-five percent
(125%) of the amount reasonably estimated to effect such cure. The balance of the unpaid sum of Payment Requests, after deduction of such withheld amount, shall be paid to DEVELOPER at the end of the Review Period. For purposes of this Agreement, "substantial completion" of the Drainage Improvements shall be deemed to have occurred as of the date the City Engineer provides an informal written notification (the "Completion Notice") thereof with or without a list of minor "punchlist"-type items that still need to be repaired, replaced or completed, following a written request by DEVELOPER for such Completion Notice. The City Engineer shall respond within ten (10) working days after his/her receipt of DEVELOPER's written request by delivering to DEVELOPER (1) a Completion Notice with or without a punchlist or (2) a written notice that the Drainage Improvements are not substantially complete and the action the City reasonably requires DEVELOPER to take to achieve such substantial completion.

This Subsection 4.2.5 shall not apply to the Drainage Improvements to the extent the costs of such improvements are paid or reimbursed by Mello Roos CFD funds.

4.2.6 Credit/Excess Landscape and Sewer Credits. Any excess landscape or sewer construction credits (the "Excess Landscape/Sewer Credits") for the landscape improvements (the "Landscape Improvements") or sewer improvements (the "Sewer Improvements") set forth in Exhibit "E" may be applied by DEVELOPER as a credit against further impact fee obligations imposed by the City for other projects by DEVELOPER within any portion of the City, or by such home builders under contract with DEVELOPER within such project(s). Such Excess Landscape/Sewer Credits shall be reduced to the extent the costs of such improvements are paid or reimbursed by Mello Roos CFD funds.

4.3 Right of Way Construction. DEVELOPER agrees, at DEVELOPER's cost and expense (subject to DEVELOPER's credits against Development Impact Fees as set forth herein), to complete the following roadway improvements, including perimeter landscaping, within the time periods stated below:

**Summit Avenue:** DEVELOPER will construct north-half improvements on Summit Avenue along the Frontage prior to 401st building permit. (south half to be constructed by Sierra Lakes CFD). Developer will install landscape improvements within the Owner Frontage only (excludes Frontage within Planning Areas 5, 6A, 6B, and 12) along the north side of the ROW prior to 601st certificate of occupancy.

**Citrus Avenue:** DEVELOPER will construct full-width improvements on Citrus Avenue along the Frontage prior to 401st building permit. If City does not acquire the necessary ROW, half-width improvements will be constructed. DEVELOPER will install landscape improvements within the Owner Frontage only (excludes Frontage within Planning Area 12) along the western side of the right-of-way, north of Summit Avenue prior to 601st certificate of occupancy.

**Knox Avenue:** DEVELOPER will construct full-width improvements on Knox Avenue prior to 301st building permit. DEVELOPER will construct landscaping improvements within the Owner
Frontage only (excludes Frontage within Planning Areas 6A and 6B), prior to 501st certificate of occupancy. City shall construct landscaping along the Frontage adjacent to the Park Complex.

**Lytle Creek Road:** DEVELOPER will construct half-width improvements on Lytle Creek Road along the Frontage (east side) and install landscape improvements within the Owner Frontage only, (excludes Frontage within Planning Area 5) all prior to 101st certificate of occupancy.

4.4 **Drainage Basins.** DEVELOPER shall construct one (1) temporary drainage detention basin within Planning Area 6B of the Property ("Basin") as part of the drainage system for the Project. DEVELOPER and City acknowledge that the Basin is necessary until the San Bernardino County Flood Control District increases the capacity of regional flood control facilities downstream of the Project (the "Regional Facilities"). The Basin shall be located within the 4.25 acre area generally shown on Exhibit F and sized as identified in a Hydrology Study to be prepared by Developer and approved by the City. City agrees that (i) no additional detention basins or facilities, other than the Basin, shall be required for the Project, and (ii) development of the Project shall not be delayed by City by reason of the Regional Facilities. The Basin will be offered for dedication to the City within (a) ninety (90) days after completion of the Basin, or (b) upon recordation of a parcel map to subdivide Planning Areas 6A and 6B, whichever is later. City agrees to reconvey Planning Area 6B to Developer in accordance with Government Code Section 66477.5 upon the City (x) making the determination that the public purpose for which this Basin was dedicated no longer exists after permanent drainage improvements are constructed which service the Project, and (y) failing to improve Planning Area 6B for public park use as part of the Park Complex within eighteen (18) months after the aforementioned permanent drainage improvements are constructed.

4.5 **Project Amenities.** Developer shall construct those Project amenities identified in Exhibit "G" attached hereto and as further described in the Specific Plan, all in accordance with the time schedule and other requirements set forth in Exhibit "G" and in the Specific Plan.

5. **PUBLIC IMPROVEMENTS.**

5.1 **Financing.** If deemed appropriate or, if requested by DEVELOPER, CITY and DEVELOPER will cooperate in the formation of any special assessment district, community facilities district or alternate financing mechanism to pay for the construction and/or maintenance and operation of public infrastructure facilities required as part of the Development Plan. CITY also agrees that, to the extent any such district or other financing entity is formed and sells bonds in order to finance such reimbursements, DEVELOPER may be reimbursed to the extent that DEVELOPER spends funds or dedicates land for the establishment of public facilities. Without limiting the foregoing, DEVELOPER has petitioned the City to form a Mello Roos Community Facilities District ("District") pursuant to Government Code Section 53319 for the purpose of financing the District's acquisition of public improvements to be constructed and dedicated by DEVELOPER for the Project and City has adopted a Resolution of Intent to form the District (the "ROI"). The boundaries of the District are the boundaries of the Property (excepting Planning Areas 6A and 6B). The District's special tax rate for any single family residential unit constructed in the Project shall not exceed the City's adopted community facilities district policies. The City shall diligently proceed to notice a public hearing pursuant to Government Code Section 53322 to consider the formation and approval of the District subject to, and in accordance with, the ROI and the requirements of the Mello Roos
Community Facilities Act of 1982, as amended. Nothing herein shall be deemed a commitment by the City to adopt a resolution of formation to form said District, it being understood and agreed that such adoption and approval are legislative acts within the unencumbered discretion of the City Council.

6. **REVIEW FOR COMPLIANCE.**

6.1 **Periodic Review.** The Community Development Director shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by DEVELOPER with the terms of the Agreement. DEVELOPER shall submit an Annual Monitoring Report, in a form acceptable to the Community Development Director, within 30 days after written notice from the Planning Manager. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council.

6.2 **Special Review.** The City Council may order a special review of compliance with this Agreement at any time. The Community Development Director shall conduct such special reviews.

6.3 **Procedure.**

(a) During either a periodic review or a special review, DEVELOPER shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on DEVELOPER.

(b) Upon completion of a periodic review or a special review, the Community Development Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by DEVELOPER with the terms of this Agreement and his or her recommended finding on that issue.

(c) If the City Council finds on the basis of substantial evidence that DEVELOPER has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the City Council makes a preliminary finding that DEVELOPER has not complied in good faith with the terms and conditions of this Agreement, the City Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5. Notice of default as provided under Section 8.4 of this Agreement shall be given to DEVELOPER prior to or concurrent with, proceedings under Section 6.4 and Section 6.5.

6.4 **Proceedings Upon Modification or Termination.** If, upon a finding under Section 6.3, CITY determines to proceed with modification or termination of this Agreement, CITY shall give written notice to DEVELOPER of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;
(b) A statement as to whether or not CITY proposes to terminate or to modify the Agreement; and,

(c) Such other information as is reasonably necessary to inform DEVELOPER of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, DEVELOPER shall be given an opportunity to be heard. DEVELOPER 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 DEVELOPER. If the City Council finds, based upon substantial evidence, that DEVELOPER has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably 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.

6.6 Certificate of Agreement Compliance. If, at the conclusion of a periodic or special review, DEVELOPER is found to be in compliance with this Agreement, CITY shall, upon request by DEVELOPER, issue a Certificate of Agreement Compliance ("Certificate") to DEVELOPER stating that after the most recent periodic or special review and based upon the information known or made known to the Community Development Director and City Council that (1) this Agreement remains in effect and (2) DEVELOPER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive 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. DEVELOPER may record the Certificate with the San Bernardino County Recorder.

Whether or not the Certificate is relied upon by assignees or other transferees or DEVELOPER, 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 Community Development Director or City Council.

7. PREVAILING WAGES.

7.1 Public Works Determination. DEVELOPER has been alerted to the requirements of California Labor Code section 1770 et seq., including, without limitation S.B. 975, which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Development Agreement constitutes a public works contract. It shall be the sole responsibility of DEVELOPER to determine whether to pay prevailing wages for any or all work required by this Development Agreement. As a material part of this Development Agreement, DEVELOPER agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Development Agreement.

7.2 Indemnification. As a further material part of this Development Agreement, DEVELOPER agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, consultants and agents from any and all claims, liability, loss, costs, damages, expenses,
fines and penalties, of whatever type or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of the DEVELOPER or DEVELOPER's contractors to comply with the prevailing wage laws of the State of California. If the CITY or any of the other indemnified parties is named as a party in any dispute arising from the failure of DEVELOPER or DEVELOPER's contractors to pay prevailing wages, DEVELOPER agrees that the CITY and those other indemnified parties may appoint their own independent counsel, and DEVELOPER agrees to pay all attorneys' fees and defense costs of the CITY and the other indemnified parties as billed, in addition to all other damages, fines, penalties, and losses incurred by the CITY and those other indemnified parties as a result of the action.

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that neither party 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 neither party shall not be liable in damages to the other party, or to any successor in interest of such party, or to any other person, and each party covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action that 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 or DEVELOPER as provided in Section 8.1 above; provided nothing in this Agreement precludes CITY from exercising its rights to enforce bonds or other security furnished by DEVELOPER to CITY as required in the Development Plan.

(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, DEVELOPER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. DEVELOPER 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 that would adequately compensate DEVELOPER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance as provided in Section 8.2, and judicial review as provided for in Section 6.5, DEVELOPER, for itself, its successors and assignees, hereby releases the CITY, its officials, 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 that 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 DEVELOPER. Subject to the provisions contained in Subsection 6.5 herein, CITY may terminate or modify this Agreement for any failure of DEVELOPER to perform any material duty or obligation of DEVELOPER 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 DEVELOPER of default setting forth the nature of the default and the actions, if any, required by DEVELOPER to cure such default and, where the default can be cured, DEVELOPER 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. DEVELOPER 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 General Plan, herein called General Plan, and that the General Plan meets all requirements of law. DEVELOPER 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 DEVELOPER 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.** DEVELOPER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officials, officers, independent contractors, subcontractors, and employees from any claim, action or proceeding against CITY, its agents, officials, officers, independent contractors, subcontractors, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any Subsequent Development Approval granted pursuant to this Agreement. CITY shall promptly notify DEVELOPER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify DEVELOPER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, DEVELOPER 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, DEVELOPER shall indemnify and hold CITY, its officials, officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of DEVELOPER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (DEVELOPER'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 or conveyance of the public improvements, save and except claims for damages to the extent arising through the gross active negligence or willful misconduct of CITY. DEVELOPER shall defend, at its expense, including attorneys' fees, CITY, its officers, officials, agents, employees, subcontractors and independent contractors in any action or proceeding based upon such alleged acts or omissions. CITY may, in its discretion, participate in the defense of any such action or proceeding.

9.4 **Environment Assurances.** DEVELOPER shall indemnify and hold CITY, its officers, officials, agents, independent contractors, subcontractors, and employees free and harmless from any liability, based or asserted, upon any act or omission of DEVELOPER, 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 DEVELOPER shall defend, at its expense, including attorneys' fees, CITY, its officers, officials, independent contractors, subcontractors, 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) that DEVELOPER 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 DEVELOPER 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 DEVELOPER, in any manner, at DEVELOPER'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 Mortgagees providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with DEVELOPER and representatives of such Mortgagees 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 DEVELOPER in the performance of DEVELOPER'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 DEVELOPER 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 DEVELOPER. 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 DEVELOPER's obligations or other affirmative covenants of DEVELOPER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by DEVELOPER 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. REDEVELOPMENT AREA. OWNER and CITY acknowledge that the Property is currently located within the North Fontana Redevelopment Plan Area (the "Plan Area"). No requirements to provide affordable housing or otherwise fund the development of affordable housing through imposition of fees, exactions, dedications or otherwise, under the Community Redevelopment Law (Health and Safety Code, Section 33000 et seq.) or any related existing laws adopted by the CITY shall be imposed upon the Project except for those requirements set forth in the Existing Land Use Regulations as of the Effective Date.
12. **MISCELLANEOUS PROVISIONS.**

12.1 **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 period required by Section 65868.5 of the Government Code.

12.2 **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 that 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.

12.3 **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.

12.4 **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.

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

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

12.7 **Joint and Several Obligations.** If at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one OWNER or DEVELOPER (collectively the "Obligors"), all obligations of such Obligors under this Agreement shall be joint and several, and the default of any such Obligors shall be the default of all such Obligors. Notwithstanding the foregoing, no Obligors of a single Lot that has been finally subdivided, or of a Condominium unit in a Condominium Plan that has been approved by the City, and such Lot or Condominium unit sold to a member of the general public or other ultimate user, shall have any further obligation under this Agreement with respect to such Lot or Condominium unit except as provided under Section 4 hereof.
12.8 **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

12.9 **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.

12.10 **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.

12.11 **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.

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

12.13 **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.

12.14 **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.

12.15 **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.

12.16 **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 DEVELOPER is that of a government entity regulating the development of private property and the developer of such property.

12.17 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.

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

12.19 Agent for Service of Process. In the event DEVELOPER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, DEVELOPER shall file with the Community Development 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 DEVELOPER. If for any reason service of such process upon such agent is not feasible, then in such event DEVELOPER may be personally served with such process out of San Bernardino County and such service shall constitute valid service upon DEVELOPER. DEVELOPER is amenable to the process so served, submits to the jurisdiction of the Court referenced in Section 12.15 so obtained and waives any and all objections and protests thereto. DEVELOPER 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).

12.20 Authority to Execute. The person or persons executing this Agreement on behalf of DEVELOPER 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 DEVELOPER to the performance of its obligations hereunder.

//

//

//
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

"CITY"
CITY OF FONTANA

By: _______________________
Name: _______________________
Title: _______________________
Dated: _______________________

ATTEST:

____________________________
City Clerk, Fontana

APPROVED AS TO LEGAL FORM:

BEST, BEST & KRIEGER

By: _______________________
City Attorney

"DEVELOPER"
SC FONTANA DEVELOPMENT CORPORATION
a California corporation

By: _______________________
John M. Goodman, Vice President
Date: _______________________
October 6, 2004

"OWNER"
CITRUS HEIGHTS NORTH HOLDING COMPANY,
LLC,
a Delaware limited liability company

By: _______________________
NORTH MOUNTAIN MANAGEMENT, LLC, a Delaware limited liability company
Its Sole Manager

By: _______________________
NORTH MOUNTAIN CORPORATION, a California corporation, Its Sole Manager

By: _______________________
John M. Goodman, Sr. VP/CFO
Date: _______________________
October 6, 2004
STATE OF CALIFORNIA )
COUNTY OF San Bernardino )

On October 13, 2004 before me, KAREN L. NORRIS, a Notary Public in and for said county and state, personally appeared
personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature __________________________________________

(Seal)

STATE OF CALIFORNIA )
COUNTY OF __________________________ )

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

WITNESS my hand and official seal.

Signature __________________________________________

(Seal)

STATE OF CALIFORNIA )
COUNTY OF __________________________ )

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

WITNESS my hand and official seal.

Signature __________________________________________

(Seal)
STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

On October 6, 2004 before me, Diane M. Simmons ------------------------------- a
Notary Public in and for said county and state, personally appeared JOHN M. GOODMAN ---- personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

On October 6, 2004 before me, Diane M. Simmons ------------------------------- a
Notary Public in and for said county and state, personally appeared JOHN M. GOODMAN ---- personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in his/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)
EXHIBIT "A"
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Legal Description of Property
EXHIBIT "A"

LEGAL DESCRIPTION

THE FOLLOWING DESCRIBED REAL PROPERTY IS SITUATED IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF THE SOUTHWEST QUARTER ALONG WITH THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 24, SAID POINT ALSO BEING THE CENTERLINE INTERSECTION OF CITRUS AVENUE AND SUMMIT AVENUE; THENCE SOUTH 89° 56' 03" WEST 656.46 FEET, ALONG THE CENTERLINE OF SUMMIT AVENUE, TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CENTERLINE, SOUTH 89° 56' 03" WEST 1969.48 FEET, SAID POINT ALSO BEING THE SOUTH QUARTER CORNER OF SAID SECTION 24; THENCE SOUTH 89° 59' 15" WEST 656.55 FEET; THENCE NORTH 0' 43' 18" WEST 1328.05 FEET; THENCE NORTH 89° 46' 34" EAST 655.62 FEET; THENCE NORTH 89° 47' 04" EAST 2633.00 FEET TO A POINT IN THE CENTERLINE OF SAID CITRUS AVENUE; THENCE SOUTH 0' 27' 17" EAST 635.49 FEET, ALONG THE CENTERLINE OF CITRUS AVENUE; THENCE SOUTH 89° 32' 44" WEST 657.38 FEET; THENCE SOUTH 0' 31' 54" EAST 697.35 FEET TO THE TRUE POINT OF BEGINNING.

SAID DESCRIBED REAL PROPERTY CONTAINING 3,940,404 SQUARE FEET MORE OR LESS.

PARCEL B

BEGINNING AT THE CENTER SECTION CORNER OF SAID SECTION 24; THENCE SOUTH 0' 45' 37" EAST 40.00 TO A POINT IN THE SOUTHERLY LINE OF THAT CERTAIN 80.00 FOOT WIDE METROPOLITAN WATER DISTRICT RIGHT-OF-WAY AS DESCRIBED IN DEED FILED IN BOOK 7447 PAGE 482 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY; SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE, SOUTH 89° 34' 03" WEST 1309.24 FEET TO A POINT IN THE CENTERLINE OF LYTLE CREEK ROAD; THENCE, ALONG SAID CENTERLINE, SOUTH 0' 40' 22" EAST 1285.70 FEET; THENCE NORTH 89° 46' 34" EAST 491.76 FEET TO A POINT IN THE NORTHWesterLY LINE OF THAT CERTAIN 100.00 FOOT METROPOLITAN WATER DISTRICT RIGHT-OF-WAY AS DESCRIBED IN INSTRUMENT No. 93-
337344, OFFICIAL RECORDS, RECORDED AUGUST 5, 1993 IN THE OFFICE OF
THE COUNTY RECORDER OF SAN BERNARDINO COUNTY; THENCE NORTH 41°
48’ 51” EAST 1738.66 FEET, ALONG SAID NORTHWESTERLY LINE, TO A POINT
IN SAID METROPOLITAN WATER DISTRICT 80.00 FOOT RIGHT-OF-WAY
SOUTHERLY LINE; THENCE SOUTH 89° 38’ 08” WEST 356.84 FEET, ALONG SAID
SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING.

SAID DESCRIBED REAL PROPERTY CONTAINING 1,388,811 SQUARE FEET
MORE OR LESS.

PARCEL C

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 24, SAID
POINT ALSO BEING THE CENTERLINE INTERSECTION OF CITRUS AVENUE
AND THAT CERTAIN 80.00 FOOT WIDE METROPOLITAN WATER DISTRICT
RIGHT-OF-WAY AS SHOW ON RECORD OF SURVEY MAP FILED IN BOOK 31
PAGES 58 THRU 60 IN THE OFFICE OF THE COUNTY RECORDER OF SAN
BERNARDINO COUNTY; THENCE SOUTH 0’ 27’ 17” EAST 40.00, ALONG THE
CENTERLINE OF CITRUS AVENUE TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 89° 38’ 08” WEST 2148.08 FEET ALONG THE SOUTHERLY LINE
OF SAID METROPOLITAN WATER DISTRICT 80.00 RIGHT-OF-WAY TO THE
NORTHEAST CORNER OF THAT CERTAIN 100.00 FOOT METROPOLITAN
WATER DISTRICT RIGHT-OF-WAY AS DESCRIBED IN INSTRUMENT No. 93-
387999, OFFICIAL RECORDS, RECORDED SEPTEMBER 9, 1993 IN THE OFFICE
OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY; THENCE SOUTH
41° 48’ 51” WEST 726.88 FEET, ALONG THE SOUTHEASTERLY LINE OF SAID
100.00 FOOT METROPOLITAN WATER DISTRICT RIGHT-OF-WAY; THENCE
SOUTH 0’ 45’ 37” WEST 421.79 FEET; THENCE NORTH 89° 47’ 04” EAST 2634.76
FEET, TO THE CENTERLINE OF SAID CITRUS AVENUE; THENCE NORTH 0’ 27’
17” WEST 967.29 FEET ALONG SAID CENTERLINE, TO THE TRUE POINT OF
BEGINNING.

SAID DESCRIBED REAL PROPERTY CONTAINING 2,409,541 SQUARE FEET
MORE OR LESS.

PARCEL D

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 24, SAID
POINT ALSO BEING THE CENTERLINE INTERSECTION OF CITRUS AVENUE
AND THAT CERTAIN 80.00 FOOT WIDE METROPOLITAN WATER DISTRICT
RIGHT-OF-WAY AS SHOW ON RECORD OF SURVEY MAP FILED IN BOOK 31
PAGES 58 THRU 60 IN THE OFFICE OF THE COUNTY RECORDER OF SAN
BERNARDINO COUNTY; THENCE NORTH 0’ 55’ 01” WEST 40.00, ALONG THE
CENTERLINE OF CITRUS AVENUE TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 89° 38' 08" WEST 1319.98 FEET ALONG THE NORTHERLY LINE OF SAID METROPOLITAN WATER DISTRICT 80.00 RIGHT-OF-WAY; THENCE NORTH 0° 49' 44" WEST 1279.50 FEET; THENCE NORTH 89° 37' 37" EAST 1318.01 FEET TO A POINT IN THE CENTERLINE OF SAID CITRUS AVENUE; THENCE SOUTH 0° 35' 01" EAST 1279.72 FEET TO THE TRUE POINT OF BEGINNING.

SAID DESCRIBED REAL PROPERTY CONTAINING 1,687,736 SQUARE FEET MORE OR LESS.

PREPARED BY: MADOLE & ASSOCIATES, INC.

ANTHONY HARO, PLS #7635
Expiration: 12/31/2004
EXHIBIT "B"
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Map of Property
EXHIBIT "C"
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Existing Development Approvals

Citrus Heights North Specific Plan

Tentative Tract Map No. 16868

Environmental Impact Report No. 2003111125
EXHIBIT "D"
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Existing Land Use Regulations

2. City of Fontana, General Plan Adopted October 21, 2003
3. City of Fontana, Citrus Heights North Specific Plan, Adopted August 17, 2004
EXHIBIT "E"
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Impact Fee Schedule/Fee Credits
EXHIBIT E

DEVELOPMENT AGREEMENT (D.A.) EXHIBIT

CITRUS HEIGHTS NORTH
579 Single Family Units
548 Condo's & Townhomes
142.0 Net Acres
190.0 Gross Acres

(a.) POLICE FACILITIES IMPACT FEE

<table>
<thead>
<tr>
<th>POLICE FACILITIES FEE</th>
<th>QUANT</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential, Single Family</td>
<td>579</td>
<td>units</td>
<td>$109.00</td>
<td>$63,111.00</td>
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</tr>
<tr>
<td>Residential, Multi-Family</td>
<td>548</td>
<td>units</td>
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<tr>
<td>FAIR SHARE OBLIGATION</td>
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<td></td>
<td>$163,943.00</td>
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</table>

(b.) LIBRARY FACILITIES IMPACT FEE

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<tr>
<th>LIBRARY FEES</th>
<th>QUANT</th>
<th>UNIT</th>
<th>FEE</th>
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<th>COMMENT</th>
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<tbody>
<tr>
<td>Residential, Single Family</td>
<td>579</td>
<td>units</td>
<td>$351.00</td>
<td>$203,229.00</td>
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<td>units</td>
<td>$351.00</td>
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<td>FAIR SHARE OBLIGATION</td>
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<td>$395,577.00</td>
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(c.) FIRE FACILITIES IMPACT FEE

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<th>FIRE FEES</th>
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<th>FEE</th>
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<th>COMMENT</th>
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<tr>
<td>Residential, Single Family</td>
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<td>units</td>
<td>$164.00</td>
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<td>units</td>
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<td>FAIR SHARE OBLIGATION</td>
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<td>$184,828.00</td>
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</table>

(d.) SANITARY SEWAGE FACILITIES EXPANSION IMPACT FEE (IEUA, FORMERLY CBMWD)

<table>
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<tr>
<th>SANITARY SEWAGE FACILITY EXPANSION FEE</th>
<th>QUANT</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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<tbody>
<tr>
<td>Residential, Single Family</td>
<td>579</td>
<td>EDU</td>
<td>$3,905.00</td>
<td>$2,260,995.00</td>
<td>fee effective 7/1/04</td>
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<td>Residential, Multi-Family</td>
<td>548</td>
<td>EDU</td>
<td>$3,905.00</td>
<td>$2,139,940.00</td>
<td>fee effective 7/1/04</td>
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<td>$4,400,935.00</td>
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(e.) SAN BERNARDINO COUNTY FLOOD CONTROL IMPACT FEE
(Upper Ettrwanda Creek and San Sevaine Creek Flood Control Plan Area)

<table>
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<tr>
<th>SAN SEVAINE CHANNEL FEE</th>
<th>QUANT</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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<tr>
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<td>ac/gr</td>
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<td>FAIR SHARE OBLIGATION</td>
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<td>$836,950.00</td>
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### (f) SEWER CONNECTION IMPACT FEE

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<th>SEWER CONNECTION CHARGES</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>Residential, Single Family</td>
<td>579</td>
<td>EDU</td>
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<td>Subtotal</td>
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<tr>
<td>Total Construction Credit</td>
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<td>-1,208,448.00</td>
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</tbody>
</table>

EXCESS FAIR SHARE CONTRIBUTION
($340,658.00)

### (g) PUBLIC FACILITIES IMPACT FEE

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<tr>
<th>PUBLIC FACILITIES FEE</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
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<td>$174,685.00</td>
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### (h) MUNICIPAL SERVICES IMPACT FEE

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<th>MUNICIPAL SERVICES FACILITIES FEE</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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<td>Residential, Single Family</td>
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<td>$1,524,831.00</td>
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### (i) TRAFFIC/CIRCULATION FEE

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<tr>
<th>CIRCULATION ELEMENT IMPACT FEE</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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<td>Total Construction Credit</td>
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<td>($1,422,601.65)</td>
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</table>

EXCESS FAIR SHARE CONTRIBUTION
$79,365.35

### (j) LANDSCAPE FEE

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<th>LANDSCAPE FEES</th>
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<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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<tr>
<td>Subtotal</td>
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<td>$543,555.00</td>
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<tr>
<td>Total Construction Credit</td>
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<td>($630,193.50)</td>
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<tr>
<td>RESIDUAL FEE (EXCESS)</td>
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</table>
(k.) **PARK DEVELOPMENT FEE**

<table>
<thead>
<tr>
<th>PARK DEVELOPMENT FUND FEE</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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</thead>
<tbody>
<tr>
<td>Residential, Single Family</td>
<td>579</td>
<td>units</td>
<td>$6,000.00</td>
<td>$3,474,000.00</td>
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<tr>
<td>Residential, Multi-Family</td>
<td>548</td>
<td>units</td>
<td>$5,419.80</td>
<td>$2,970,050.40</td>
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<td>Subtotal</td>
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<td>$6,444,050.40</td>
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<td>Total Construction Credit</td>
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<td>($2,223,861.50)</td>
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<tr>
<td>RESIDUAL FEE</td>
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<td>$4,220,188.90</td>
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(1.) **STORM DRAINAGE FACILITIES FEE**

<table>
<thead>
<tr>
<th>STORM DRAINAGE FEE (1-10 NORTH)</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
<th>COMMENT</th>
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</thead>
<tbody>
<tr>
<td>Residential</td>
<td>142.00</td>
<td>AC/mt</td>
<td>$15,721.00</td>
<td>$2,232,382.00</td>
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<td>Subtotal</td>
<td></td>
<td></td>
<td></td>
<td>$2,232,382.00</td>
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<tr>
<td>Total Construction Credit (See In-lieu Exhibit)</td>
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<td></td>
<td>($5,307,033.60)</td>
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<tr>
<td>EXCESS FAIR SHARE CONTRIBUTION</td>
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<td>($3,074,651.60)</td>
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Legend:

- △ Traffic signal by others
- ▲ Proposed traffic signal
- Construction credit available - non-project frontage - see cross-sections
- Construction credit available - see cross-sections

Circulation element impact fee: $1,501,967
Circulation construction: $1,422,601

MADOLE AND ASSOCIATES, INC.
10501 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA. 91730
(909) 948-1311

Circulation improvements
LEGEND:

© INDICATES DEVELOPER'S RESPONSIBILITY
○○ INDICATES CREDIT TO DEVELOPER

MADOLE AND ASSOCIATES, INC.
10601 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA. 91730
(909) 948-1311

CIRCULATION IMPROVEMENTS
LYTLE CREEK ROAD – PROJECT FRONTAGE

LYTLE CREEK ROAD – NON-PROJECT FRONTAGE

**LEGEND:**

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- ©© INDICATES CREDIT TO DEVELOPER

**MADOLE AND ASSOCIATES, INC.**

10601 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA 91730
(909) 948-1311

**CIRCULATION IMPROVEMENTS**
<table>
<thead>
<tr>
<th>Project Category</th>
<th>Quant.</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Total</th>
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<tr>
<td><strong>SUMMIT AVENUE - PROJECT FRONTAGE</strong></td>
<td></td>
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<tr>
<td>6.5&quot; AC/NAT.</td>
<td>29,230</td>
<td>S.F.</td>
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<td>L.F.</td>
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<td>2</td>
<td>EA.</td>
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<td>2,630</td>
<td>L.F.</td>
<td>$15.00</td>
<td>$39,450</td>
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<td><strong>SUBTOTAL</strong></td>
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<tr>
<td><strong>SUMMIT AVENUE - NON-PROJECT FRONTAGE</strong></td>
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<tr>
<td>6.5&quot; AC/NAT.</td>
<td>54,630</td>
<td>S.F.</td>
<td>$1.20</td>
<td>$65,556</td>
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<td>8&quot; CURB &amp; GUTTER</td>
<td>1,275</td>
<td>L.F.</td>
<td>$7.50</td>
<td>$9,563</td>
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<td>8&quot; MEDIAN CURB</td>
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<td>L.F.</td>
<td>$6.50</td>
<td>$15,405</td>
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<td>SIDEWALK</td>
<td>7,635</td>
<td>S.F.</td>
<td>$2.00</td>
<td>$15,270</td>
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<td>SIGNAL INTERCONNECT</td>
<td>1,305</td>
<td>L.F.</td>
<td>$15.00</td>
<td>$19,575</td>
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<td><strong>SUBTOTAL</strong></td>
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<td>$125,369</td>
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<td><strong>LYTLE CREEK ROAD - PROJECT FRONTAGE</strong></td>
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<tr>
<td>6.5&quot; AC/NAT.</td>
<td>20,860</td>
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<td></td>
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<td>$25,032</td>
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<td><strong>LYTLE CREEK ROAD - NON-PROJECT FRONTAGE</strong></td>
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<td>6.5&quot; AC/NAT.</td>
<td>19,800</td>
<td>S.F.</td>
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<td>8&quot; CURB &amp; GUTTER</td>
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<td>L.F.</td>
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<td>$9,300</td>
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<td>7,440</td>
<td>S.F.</td>
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<td><strong>CITRUS AVENUE - PROJECT FRONTAGE</strong></td>
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<tr>
<td>6.5&quot; AC/NAT. (W16' + Full E)</td>
<td>155,950</td>
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<td>$187,140</td>
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<td>L.F.</td>
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<td>$49,875</td>
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<td>8&quot; CURB &amp; GUTTER (E ONLY)</td>
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<td>L.F.</td>
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<td>8&quot; MEDIAN CURB</td>
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<td>L.F.</td>
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<tr>
<td>6.5&quot; AC/NAT.</td>
<td>42,025</td>
<td>S.F.</td>
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<td>8&quot; CURB &amp; GUTTER</td>
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<td>$9,000</td>
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<td>8&quot; MEDIAN CURB</td>
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<td>L.F.</td>
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<td>SINGLE FAMILY RESIDENTIAL</td>
<td>579</td>
<td>UNITS</td>
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<td>CONDO'S &amp; TOWNHOMES</td>
<td>548</td>
<td>UNITS</td>
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<td>SEWER DEVELOPMENT IN-LIEU</td>
<td>QUANT.</td>
<td>UNIT</td>
<td>COST</td>
<td>TOTAL</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------</td>
<td>-------</td>
<td>---------</td>
<td>-----------</td>
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<tr>
<td>LYTHE CREEK ROAD</td>
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<td></td>
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</tr>
<tr>
<td>15&quot; V.C.P.</td>
<td>2600</td>
<td>L.F.</td>
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<tr>
<td>10&quot; V.C.P.</td>
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<td>15&quot; V.C.P.</td>
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CREDIT FOR KNOX AVENUE SEWER*  
CITRUS HEIGHTS / SOUTH OF CURTIS AVENUE  

$111,175.00

TOTAL  
$1,208,448.00

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<tr>
<th>SEWER CONNECTION CHARGES</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
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<tr>
<td>RESIDENTIAL</td>
<td>1127</td>
<td>EDU.</td>
<td>$770.00</td>
<td>$867,790</td>
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</table>

TOTAL  
$867,790

*PER CITRUS HEIGHTS DA (8/14/03)
LYTLE CREEK ROAD
SUMMIT AVENUE
CITRUS AVENUE

STORM DRAINAGE FEE (10 NORTH) $2,232,382
CONSTRUCTION IN-LIEU $5,307,034

MADOLE AND ASSOCIATES, INC.
10601 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA 91730
(909) 948-1311

STORM DRAIN IMPROVEMENTS
# Storm Drainage Construction In-Lieu

<table>
<thead>
<tr>
<th>STORM DRAINAGE CONSTRUCTION IN-LIEU</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>UNIT COST</th>
<th>TOTAL</th>
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<td><strong>SUMMIT AVENUE</strong></td>
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<tr>
<td>36&quot; R.C.P.</td>
<td>53</td>
<td>L.F.</td>
<td>$90.00</td>
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<td>84&quot; R.C.P.</td>
<td>85</td>
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<td>$234.00</td>
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<tr>
<td>10' X 9' R.C.B.</td>
<td>234</td>
<td>L.F.</td>
<td>$563.00</td>
<td>$131,742</td>
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<tr>
<td>11' X 9' R.C.B.</td>
<td>2425</td>
<td>L.F.</td>
<td>$614.00</td>
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<tr>
<td>12' X 9' R.C.B.</td>
<td>1306</td>
<td>L.F.</td>
<td>$644.00</td>
<td>$841,064</td>
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<td>MANHOLE (R.C.B.)</td>
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<td>EA.</td>
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<td>TRAN. / JUNCT. STR.</td>
<td>10</td>
<td>EA.</td>
<td>$4,000.00</td>
<td>$40,000</td>
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<td>CATCH BASINS</td>
<td>7</td>
<td>EA.</td>
<td>$3,400.00</td>
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<tr>
<td>R.C.B. TRAN. STR.</td>
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<td>EA.</td>
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<td><strong>SUBTOTAL</strong></td>
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<td></td>
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<td><strong>LYTLE CREEK ROAD</strong></td>
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<tr>
<td>57&quot; R.C.P.</td>
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<tr>
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<td>54&quot; R.C.P.</td>
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<td>EA.</td>
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<tr>
<td><strong>TOTAL</strong></td>
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<td></td>
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<td>$5,307,033.60</td>
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<table>
<thead>
<tr>
<th>STORM DRAINAGE FEE (I-10 NORTH)</th>
<th>QUANT.</th>
<th>UNIT</th>
<th>FEE</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>RESIDENTIAL (NET AC.)</td>
<td>142.00</td>
<td>A.C.</td>
<td>$15,721.00</td>
<td>$2,232,382.00</td>
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</tbody>
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(1) Assumes Summit RCB existing to 210' e/o Lytle Creek Road (2004 City Project)
(2) Summit est. does not include misc. CMP risers, pipe closures and conc. Collars
(3) RCB program cost est. from Phase I ($600/lf for 11x9 = $15/cy/lf)
(4) Net AC = estimated net developable area
LEGEND:

- MEDIAN LANDSCAPING
- PARKWAY LANDSCAPING

LANDSCAPE FEE $543,555
LANDSCAPE CONSTRUCTION IN-LIEU $630,194

MADOLE AND ASSOCIATES, INC.
10601 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA 91730
(909) 948-1311

LANDSCAPE IMPROVEMENTS
## Landscape Construction In-Lieu

<table>
<thead>
<tr>
<th>Program</th>
<th>Quant.</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Total</th>
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<tr>
<td>Parkway Landscape</td>
<td>7,425</td>
<td>S.F.</td>
<td>$2.00</td>
<td>$14,850.00</td>
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<td><strong>Summit Avenue</strong></td>
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<tr>
<td>Median Landscape</td>
<td>37,590</td>
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<td>$4.75</td>
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<td>Median Cobble in Mortar (@ Median Nose)</td>
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<td><strong>Subtotal</strong></td>
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<td><strong>Summit Avenue - Non-Project Frontage</strong></td>
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<td>Parkway Landscape</td>
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<tr>
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<td></td>
<td></td>
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<td>$13,120.00</td>
</tr>
<tr>
<td><strong>Citrus Avenue - Non-Project Frontage</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Parkway Landscape</td>
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<td><strong>Citrus Avenue - Project Frontage</strong></td>
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<tr>
<td>Median Landscape</td>
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<td>$201,590.00</td>
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<td><strong>Subtotal</strong></td>
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<tr>
<td><strong>Construction Contingency (35%)</strong></td>
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<td><strong>Total</strong></td>
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<td>$630,193.50</td>
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## Landscape Fees

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<th>Quant.</th>
<th>Unit</th>
<th>Fee</th>
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<td>Single-Family Residential</td>
<td>579</td>
<td>units</td>
<td>$493.00</td>
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<td>Condo's &amp; Townhomes</td>
<td>548</td>
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<td><strong>Total</strong></td>
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<td>$543,555</td>
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Non-frontage quantities do not include area for 10 foot additional landscape easement.
LEGEND:

- STREET IMPROVEMENTS
- W WATER MAINLINE IMPROVEMENTS
- OH UTILITY UNDERGROUNDING
- DRY UTILITY IMPROVEMENTS

CONSTRUCTION $880,861.50

SUMMIT PARK OFF-SITE IMPROVEMENTS
SUMMIT PARK OFF-SITES

<table>
<thead>
<tr>
<th></th>
<th>QUANT.</th>
<th>UNIT</th>
<th>%</th>
<th>PROGRAM %</th>
<th>UNIT COST</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>SUMMIT AVENUE - PARK FRONTAGE</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Utility Undergrounding</td>
<td>1,030</td>
<td>L.F.</td>
<td>100%</td>
<td>100%</td>
<td>$196.00</td>
<td>$201,880</td>
</tr>
<tr>
<td>Dry Utilities</td>
<td>1,310</td>
<td>L.F.</td>
<td>100%</td>
<td>100%</td>
<td>$100.00</td>
<td>$131,000</td>
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<tr>
<td><strong>SUBTOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$332,880</strong></td>
</tr>
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</table>

| LYTLE CREEK ROAD - PARK FRONTAGE |        |      |      |           |           |          |
| Water Mainline                | 1,280  | L.F. | 100% | 100%      | $60.00    | $76,800  |
| Dry Utilities                 | 1,320  | L.F. | 100% | 100%      | $100.00   | $132,000 |
| **SUBTOTAL**                  |        |      |      |           |           | **$208,800** |

| KNOX AVENUE - PARK FRONTAGE   |        |      |      |           |           |          |
| 4.5" AC/NAT. (W ONLY)        | 28,520 | S.F. | 100% | 100%      | $1.00     | $28,520  |
| 8" CURB & GUTTER (W ONLY)    | 1,300  | L.F. | 100% | 100%      | $7.50     | $9,750   |
| Sidewalk (W ONLY)            | 7,800  | S.F. | 100% | 100%      | $1.55     | $12,090  |
| Water Mainline (by acre)     | 1,200  | L.F. | 10%  | 10%       | $60.00    | $7,200   |
| Dry Utilities (by acre)      | 1,200  | L.F. | 10%  | 10%       | $100.00   | $12,000  |
| Traffic Signal (Knox/Summit) | 1      | L.S. | 25%  | 25%       | $165,000  | $41,250  |
| **SUBTOTAL**                  |        |      |      |           |           | **$110,810** |

**SUBTOTAL**                   |        |      |      |           |           | **$652,490** |

**CONSTRUCTION CONTINGENCY (35%)** | **$228,371.50** |

**TOTAL**                      |        |      |      |           |           | **$880,861.50** |

Unit costs reflect City's Program Unit Costs (not necessarily construction costs).

---

**LEGEND:**

- © INDICATES DEVELOPER'S RESPONSIBILITY
- ©© INDICATES CREDIT TO DEVELOPER

SUMMIT PARK OFF-SITE IMPROVEMENTS

**MADOLE AND ASSOCIATES, INC.**
10601 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA 91730
(909) 948-1311
EXHIBIT “F”
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Description of Park/Basin Dedication

Description of Park/Basin Dedication: Planning Areas 6A (9.18 acres – Park) and 6B (4.25 acres – Basin) of Citrus Heights North Specific Plan
SUMMIT PARK / DETENTION BASIN

MADOLE AND ASSOCIATES, INC.
10601 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA 91730
(909) 948-1311

Exhibit "F"
Page 2 of 2
EXHIBIT “F-1”
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Park Offsite Improvements/Park Improvement Credit
CONSTRUCTION $880,861.50

SUMMIT PARK OFF-SITE IMPROVEMENTS

Exhibit "F-1"

MADOLE AND ASSOCIATES, INC.
10501 CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA 91730
(909) 948-1311
### SUMMIT PARK OFF-SITES

<table>
<thead>
<tr>
<th>QUANT.</th>
<th>UNIT</th>
<th>% Share</th>
<th>PROGRAM</th>
<th>UNIT COST</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>1,030</td>
<td>L.F.</td>
<td>100%</td>
<td>UTILITY UNDERGROUNDING</td>
<td>$196.00</td>
<td>$201,880</td>
</tr>
<tr>
<td>1,310</td>
<td>L.F.</td>
<td>100%</td>
<td>DRY UTILITIES</td>
<td>$100.00</td>
<td>$131,000</td>
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<tr>
<td></td>
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<td></td>
<td><strong>SUBTOTAL</strong></td>
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<td><strong>$332,880</strong></td>
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<table>
<thead>
<tr>
<th>QUANT.</th>
<th>UNIT</th>
<th>% Share</th>
<th>PROGRAM</th>
<th>UNIT COST</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>1,280</td>
<td>L.F.</td>
<td>100%</td>
<td>WATER MAINLINE</td>
<td>$60.00</td>
<td>$76,800</td>
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<tr>
<td>1,320</td>
<td>L.F.</td>
<td>100%</td>
<td>DRY UTILITIES</td>
<td>$100.00</td>
<td>$132,000</td>
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<tr>
<td></td>
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<td></td>
<td><strong>SUBTOTAL</strong></td>
<td></td>
<td><strong>$208,800</strong></td>
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<table>
<thead>
<tr>
<th>QUANT.</th>
<th>UNIT</th>
<th>% Share</th>
<th>PROGRAM</th>
<th>UNIT COST</th>
<th>TOTAL</th>
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</thead>
<tbody>
<tr>
<td>28,520</td>
<td>S.F.</td>
<td>100%</td>
<td>4.5&quot; AC/NAT. (W ONLY)</td>
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<td>1,300</td>
<td>L.F.</td>
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<td>7,800</td>
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<td>SIDEWALK (W ONLY)</td>
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<td>1</td>
<td>L.S.</td>
<td>25%</td>
<td>TRAFFIC SIGNAL (KNOX/SUMMIT)</td>
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<td></td>
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<td><strong>SUBTOTAL</strong></td>
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<td><strong>$652,490</strong></td>
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**CONSTRUCTION CONTINGENCY (35%)**

<table>
<thead>
<tr>
<th>QUANT.</th>
<th>UNIT</th>
<th>% Share</th>
<th>PROGRAM</th>
<th>UNIT COST</th>
<th>TOTAL</th>
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</thead>
<tbody>
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<td><strong>CONSTRUCTION CONTINGENCY (35%)</strong></td>
<td></td>
<td><strong>$228,371.50</strong></td>
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**TOTAL**

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<tr>
<th>QUANT.</th>
<th>UNIT</th>
<th>% Share</th>
<th>PROGRAM</th>
<th>UNIT COST</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$880,861.50</strong></td>
</tr>
</tbody>
</table>

Unit costs reflect City's Program Unit Costs (not necessarily construction costs)

---

**LEGEND:**

- 1 INDICATES DEVELOPER'S RESPONSIBILITY
- 0 INDICATES CREDIT TO DEVELOPER

---

**SUMMIT PARK OFF-SITE IMPROVEMENTS**

MADOLE AND ASSOCIATES, INC.
1060 S CHURCH STREET STE. 107
RANCHO CUCAMONGA, CA. 91730
(909) 948-1311

Exhibit "F-1"
Page 2 of 2
EXHIBIT “G”
TO CITRUS HEIGHTS NORTH DEVELOPMENT AGREEMENT

Project Amenities

Amenity Timing –

Paseo Timing – Paseos shall be constructed concurrently with the Planning Area (PA) in which they are situated. The paseo in a PA must be completed by the issuance of 50% of building permits in the PA.

Neighborhood Park Timing (PA19, 18) – Neighborhood Parks shall begin construction no later than the issuance of 25% of the building permits in the contiguous PA. The park must be completed by the time 50% of the building permits in the contiguous PA are issued.

Rec. Center Timing (PA 22, 20) - PA 22 must be completed by the issuance of 50% of the building permits in PA16 and PA17 combined. Should only one PA be developed immediately, this requirement would be 65% for either PA16 or PA17. PA 20 must be completed by the issuance of the 141st building permit within PA4, 8, 10, 13, and 14 combined. In order to be complete, the facility shall be able to demonstrate that a temporary Certificate of Occupancy could be issued.

Primary Rec. Center – PA21. PA21 shall begin construction no later than the issuance of the 151st building permit for the entire project. PA21 shall be completed before issuance of the 351st building permit for the entire project. In order to be complete, the facility shall be able to demonstrate that a temporary Certificate of Occupancy could be issued.

In order to meet the above requirements, the City agrees to diligently process all plans and permits necessary to complete the above. This includes but is not limited to: grading plans, tentative and final tract maps, final intract engineering plans, design reviews, plan checks, bonds, permit issuance and inspections. At the risk of the Developer, the City shall agree to process and diligently check plans in advance of Planning Commission approval. In the event the Developer has made every good faith effort to complete the amenities in a timely manner and is not successful due to circumstances beyond their control, such as delays in City processing, the Planning Manager shall be required to extend the building permit thresholds above and Developer shall continue its good faith efforts at timely completion of the facilities.
FROM: Department of Engineering  
SUBJECT: Approve a Traffic Signal Reimbursement Agreement and a Traffic Signal Maintenance Agreement with the City of Rancho Cucamonga - East Avenue and Miller Avenue

RECOMMENDATION:
1. Approve and authorize the City Manager to execute a Traffic Signal Reimbursement Agreement with the City of Rancho Cucamonga for the installation of a new traffic signal at East Avenue and Miller Avenue.

2. Appropriate $90,000.00 from Local Measure I Fund No. 246 to Project No. 3319.

3. Approve and authorize the City Manager to execute a Traffic Signal Maintenance Agreement with the City of Rancho Cucamonga for the ongoing maintenance of shared traffic signals.

COUNCIL GOALS:
* To invest in the city's infrastructure (streets, sewers, parks, etc.) by providing for the development of new infrastructure.
* To invest in the city's infrastructure (streets, sewers, parks, etc.) by focusing on relief of traffic congestion.

DISCUSSION:
The City of Fontana and the City of Rancho Cucamonga continue to work cooperatively to jointly manage traffic coordination generated by both communities. As part of that, a Traffic Signal Reimbursement Agreement and a Traffic Signal Maintenance Agreement is recommended for approval as follows:

Traffic Signal Reimbursement Agreement
The Traffic Signal Reimbursement Agreement sets forth the City of Rancho Cucamonga as the lead agency for the design and construction phases of the traffic signal at East Avenue and Miller Avenue which is anticipated to begin construction in September 2017. Under the agreement, Fontana’s financial responsibility for the East Avenue and Miller Avenue Traffic Signal Project shall not exceed 50% of the total project cost of $678,418.00 as set forth in Attachment A to the Agreement unless amended in writing and approved by the parties’ respective City Councils. The $90,000.00 appropriation to the Traffic Signal Project is the balance needed to cover the City’s share of the project.

Traffic Signal Maintenance Agreement
On May 19, 1999, the City of Fontana and the City of Rancho Cucamonga entered
into a Cooperative Agreement No. CO99-054 for the maintenance of a traffic signal at the intersection of East Avenue and Baseline Road. This agreement will supersede Cooperative Agreement No. CO99-054, adding two additional traffic signals as follows:

- Traffic Signal at East Avenue and Miller Avenue estimated to be completed July 2018.
- Traffic Signal at East Avenue and Foothill Boulevard.
- The Traffic Signal at East Avenue and Baseline Avenue is currently included.

The agreement designates the City of Rancho Cucamonga to be the lead and responsible for the maintenance of the traffic signals and each City is paying for its proportionate share of the maintenance cost. Rancho Cucamonga will invoice Fontana on a semi-annual basis for its share of the maintenance cost.

Additionally, this agreement will allow for amendments to be made for the addition of any future signalized intersections by administratively updating the listed intersections in Exhibit A of the agreement.

**FISCAL IMPACT:**

The Traffic Signal Project No. 3319 reimbursement and the traffic signal maintenance are possible through Local Measure I Fund No. 246. The appropriation of $90,000.00 from Local Measure I Fund No. 246 is necessary to cover the City’s $339,209.00 share of the East Avenue and Miller Avenue Traffic Signal Project. Budget adjustments will be included with 1st Quarter Budget Report.

**MOTION:**

Approve staff recommendation.

**ATTACHMENTS:**
<table>
<thead>
<tr>
<th>Description</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reimbursement Agreement</td>
<td>Agreement</td>
</tr>
<tr>
<td>Maintenance Agreement</td>
<td>Agreement</td>
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ITEM: CC-C
REIMBURSEMENT AGREEMENT

BETWEEN

CITY OF RANCHO CUCAMONGA

AND

CITY OF FONTANA

FOR

INSTALLATION OF NEW TRAFFIC SIGNAL IMPROVEMENT AT EAST AVENUE AND MILLER AVENUE PROJECT

This Reimbursement Agreement (hereinafter referred to as “Agreement”) is made and entered into by and between the City of Rancho Cucamonga (hereinafter referred to as “RANCHO CUCAMONGA”) and the City of Fontana (hereinafter referred to as “FONTANA”) (collectively referred to as “Parties”) for FONTANA reimbursement of RANCHO CUCAMONGA for certain expenditures related to the Fiscal Year 2016/17 Installation of Four (4) Traffic Signals at Various Locations Project to include: design, construction and construction inspection specifically for the Miller Avenue and East Avenue traffic signal installation, provision of electrical service power, signing and striping, construction of curb ramps and sidewalk and installation of fiber interconnection.

WITNESSETH

WHEREAS, the RANCHO CUCAMONGA Capital Improvement Program (CIP) serves as a plan for the provision of public improvements and the construction of traffic signal improvements at the intersection of Miller Avenue and East Avenue is included in the RANCHO CUCAMONGA CIP (“PROJECT”); and

WHEREAS, the PROJECT is located along the border of RANCHO CUCAMONGA and FONTANA and is mutually beneficial to both cities; and

WHEREAS, RANCHO CUCAMONGA performed a traffic signal warrant analysis on December 30, 2015 indicating that the intersection of Miller Avenue and East Avenue satisfies warrants established in the California Manual on Uniform Traffic Control Devices; and

WHEREAS, RANCHO CUCAMONGA will take the lead on the PROJECT for the design and construction phases of the PROJECT; and
WHEREAS, RANCHO CUCAMONGA is the California Environmental Quality Act (CEQA) Lead Agency for the PROJECT and has determined that the PROJECT is categorically exempt per Article 19, Section 15301(c) of the CEQA guidelines for the PROJECT; and

WHEREAS, FONTANA agrees to reimburse RANCHO CUCAMONGA for 50 percent of the design, construction, administrative and inspection costs ("Costs") associated with the PROJECT; and

NOW, THEREFORE, RANCHO CUCAMONGA and FONTANA mutually agree to the following:

SECTION I

RANCHO CUCAMONGA AGREES:

1. That only eligible PROJECT expenses, as set forth in Attachment A to this AGREEMENT, will be reimbursed by FONTANA. RANCHO CUCAMONGA agrees that it will only request reimbursement from FONTANA for eligible PROJECT activities as defined in Attachment A.

2. To maintain and make available to FONTANA, copies of all consultant/contractor invoices, source documents, books and records; and expenses as set forth in Attachment A and in connection with the Parties' performance under this AGREEMENT for a minimum of three (3) years from the date of the Final Acceptance by RANCHO CUCAMONGA or until audit retention is achieved, whichever is later.

3. To fully cooperate with FONTANA to allow for the preparation of a Project audit if requested by FONTANA. The audit must find that all funds expended for Costs on the PROJECT were used in conformance with this Agreement.

4. To render services for design, project management and construction management utilizing RANCHO CUCAMONGA staff which will be supplemented by consultants that are specifically tasked for completing the PROJECT.

5. Under CEQA, RANCHO CUCAMONGA, as Lead Agency, is the decision-making body and shall make a CEQA Determination on the PROJECT and file the necessary environmental document with the County Clerk and complete all public notifications and hearings.

6. RANCHO CUCAMONGA shall prepare plans, specifications and estimates for the PROJECT under direction of a registered Professional
Engineer licensed in the applicable professional field in the State of California.

SECTION II

FONTANA AGREES:

1. FONTANA agrees to reimburse RANCHO CUCAMONGA for 50 percent for those eligible PROJECT Costs that are incurred by RANCHO CUCAMONGA for the PROJECT, as set forth in Attachment A to this Agreement.

2. FONTANA agrees to reimburse RANCHO CUCAMONGA for its share of costs no later than sixty (60) days from the date of final acceptance of the PROJECT.

3. FONTANA shall designate a Project Manager to represent FONTANA through whom all communications shall be channeled.

4. Project Manager shall distribute submittals, schedules, and other correspondence to applicable departments for review and comment. FONTANA shall transmit review comments within five (5) working days after the submittal is received. If no comments are received FONTANA will be considered to have no objection to the approval of RANCHO CUCAMONGA.

SECTION III

IT IS MUTUALLY AGREED:

1. To abide by all applicable federal, state and local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the applicable General Plan, as amended, as of the date of the last signature on this AGREEMENT.

2. FONTANA’s financial responsibility for the PROJECT shall not exceed 50% of the Costs set forth in Attachment A unless amended in writing and approved by the Parties’ respective City Councils. According to current cost estimates, the reimbursement amount is estimated to be $339,209 as demonstrated in Attachment A; however actual costs, and FONTANA’s share of those costs, upon completion of the project may be different. The final costs for all eligible PROJECT expenses set forth in Attachment A shall be used to set the final amount of reimbursement.

3. This agreement can be amended when agreed upon by both Parties.
4. RANCHO CUCAMONGA will use its own funds to design and construct the PROJECT with the understanding that FONTANA will reimburse RANCHO CUCAMONGA for FONTANA share of eligible PROJECT expenditures at a later date in accordance with this Agreement.

5. Eligible PROJECT reimbursements shall include only those costs incurred by RANCHO CUCAMONGA for PROJECT activities that are described in this AGREEMENT and shall not include escalation or interest.

6. RANCHO CUCAMONGA shall defend, indemnify, and hold harmless FONTANA, its officers and employees, from and against any and all actions, claims, injuries, damages, liabilities, demands, losses, judgments, penalties, expenses and costs including attorney’s fees for staff attorneys and outside counsel (collectively “Liabilities”) arising out of or in any way connected with anything done or omitted to be done by RANCHO CUCAMONGA, its officers, employees, agents, contractors, consultants, subcontractors and subconsultants of any level, in connection with the PROJECT or under or in connection with any work, authority or jurisdiction delegated to RANCHO CUCAMONGA under this AGREEMENT. RANCHO CUCAMONGA’s obligations under this Article apply to FONTANA’s “passive” and “active” negligence, but do not apply to FONTANA’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

7. FONTANA shall defend, indemnify, and hold harmless RANCHO CUCAMONGA, its officers and employees, from and against any and all actions, claims, injuries, damages, liabilities, demands, losses, judgments, penalties, expenses and costs including attorney’s fees for staff attorneys and outside counsel (collectively “Liabilities”) arising out of or in any way connected with anything done or omitted to be done by FONTANA, its officers, employees, agents, contractors, consultants, subcontractors and subconsultants of any level, in connection with the PROJECT or under or in connection with any work, authority or jurisdiction delegated to FONTANA under this AGREEMENT. FONTANA’s obligations under this Article apply to RANCHO CUCAMONGA’s “passive” and “active” negligence, but do not apply to RANCHO CUCAMONGA’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

8. RANCHO CUCAMONGA is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers’ Compensation and warrants that through its programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
9. FONTANA is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers’ Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.

10. This AGREEMENT will be considered terminated upon reimbursement of all eligible costs by PROJECT expenses as defined herein with the exception of paragraphs 6 and 7 above which shall survive termination of the agreement.

11. Notice given under or regarding this AGREEMENT shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax or private courier including overnight delivery services. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to FONTANA: Ken R. Hunt, City Manager
8353 Sierra Avenue
Fontana, CA 92335
(909) 350-7600

If to CITY: John R. Gillison, City Manager
10500 Civic Center Drive
P.O. Box 807
Rancho Cucamonga, CA 91729-0807
(909) 477-2700

12. The Recitals stated above are true and correct and are incorporated by this reference into the AGREEMENT.

13. Attachment A (Installation of New Traffic Signal Improvements at East Avenue and Miller Avenue Project: Project Scope, Projected Cost and Schedule) is hereby incorporated into this AGREEMENT.

SIGNATURES ON FOLLOWING PAGE:
IN WITNESS WHEREOF, the Parties have executed this AGREEMENT below.

THE CITY OF RANCHO CUCAMONGA

By: ___________________________
    John R. Gillison
    City Manager

Dated: ___________________________

Attest: ___________________________
    Janice C. Reynolds, City Clerk

APPROVED AS TO FORM:

By: ___________________________
    James L. Markman
    City Attorney

THE CITY OF FONTANA

By: ___________________________
    Kenneth R. Hunt
    City Manager

Dated: ___________________________

Attest: ___________________________
    Tonia Lewis, City Clerk

APPROVED AS TO FORM:

By: ___________________________
    Best Best & Krieger
    City Attorney

By: ___________________________
    Debbie M. Brazill
    Deputy City Manager
    Development Services
    Organization

By: ___________________________
    Ricardo Sandoval
    Director of Engineering/ City
    Engineer
Installation of Traffic Signal Improvements at East Avenue and Miller Avenue Project: Project Scope, Projected Cost, and Schedule

Proposed Project Work:
Fiscal Year 2016/17 Installation of Four (4) Traffic Signals at Various Locations Project will include the construction of traffic signal improvements at the intersection Miller Avenue and East Avenue including upgrading curb ramps to meet latest requirements of federal and state accessibility statutes and guidelines, fiber interconnect and other communication upgrades, and signing and striping. Reimbursed work will cover expenses related to all phases of the aforementioned PROJECT.

Summary of Project Costs (Estimate) and Funding:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Total Cost</th>
<th>Share Cost¹</th>
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<tbody>
<tr>
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<td>City of Rancho Cucamonga</td>
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<tr>
<td>Design</td>
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<tr>
<td>Capital Construction Improvements</td>
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<td>Grand Total</td>
<td>$678,418</td>
<td>$339,209</td>
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</table>

Proposed Project Schedule (milestone delivery dates):
Estimated construction start date: September 2017
Estimated completion date: July 2018

¹ Based on City boundary limits being delineated by the centerline of East Avenue.
TRAFFIC SIGNAL MAINTENANCE AGREEMENT

BETWEEN

THE CITY OF RANCHO CUCAMONGA

AND

THE CITY OF FONTANA

THIS AGREEMENT ("AGREEMENT") is made and entered into the _____ day of ______, 2017 ("Effective Date"), by and between the City of Rancho Cucamonga, a municipal corporation ("RANCHO CUCAMONGA" hereinafter), and the City of Fontana, a municipal corporation ("FONTANA" hereinafter).

WITNESSETH

WHEREAS, certain traffic signals and related facilities have been installed and are maintained as listed for designated intersections, as designated in the list attached as Exhibit "A" and incorporated by reference as if fully set forth herein, on the border of FONTANA and RANCHO CUCAMONGA which mutually benefit both Cities and sometimes individually or collectively hereinafter referred to as “the SIGNAL” or “the SIGNALS”; and

WHEREAS, RANCHO CUCAMONGA and FONTANA have previously entered into an agreement, Cooperative Agreement No. CO99-054, dated the 19th day of May, 1999 wherein FONTANA and RANCHO CUCAMONGA agreed to share the ongoing maintenance cost for one of SIGNALS, which the Cooperative Agreement is intended by the Cities to be superseded by this AGREEMENT; and

WHEREAS, RANCHO CUCAMONGA and FONTANA desire to provide for the ongoing maintenance of the SIGNAL facilities to be performed and funded by each party as specified in Exhibit “A”, pursuant to the provisions of this AGREEMENT; and

NOW, THEREFORE, it is hereby agreed as follows:

A. MAINTENANCE

1. Routine maintenance work to be performed by the responsible party, or its authorized subcontractors, under this AGREEMENT includes routine inspections, furnishing of electrical energy and necessary repairs and/or replacements as required to insure satisfactory service. Installation of additional facilities is not a maintenance function under this AGREEMENT; however, repair or replacement of damaged facilities shall be considered a maintenance function hereunder.
2. The total amount of actual maintenance costs, less reimbursements or contributions by other parties as to extraordinary expenses, such as costs which may be incurred for repair of damage to any portion of the SIGNAL or related facilities, or replacement of components of the SIGNAL, shall be jointly paid by each party hereto based upon the ratio set forth herein for apportionment of costs. These expenses shall be paid in accordance with the agreed-upon ratio, regardless of whether the actual damage occurs within FONTANA’s or RANCHO CUCAMONGA’s jurisdictional limits of the intersection in which the SIGNAL is located, unless such repairs are necessitated by the sole acts or omissions of RANCHO CUCAMONGA or FONTANA.

In such event, the City solely responsible for the damages to the SIGNAL shall pay all repair costs. Invoices for said costs shall be itemized as to materials, expenses, salaries and wages and equipment rental.

3. The party with jurisdictional over the location of any portion of the SIGNAL damaged by others shall make every reasonable effort to recover the costs of damages from the party responsible. “Reasonable efforts” shall not include commencement of litigation unless RANCHO CUCAMONGA and FONTANA reach an agreement as to an equitable division of costs of such litigation.

4. In the event of damage where the share of any single expenditure is greater than the amount of $20,000, each party will be provided with a cost estimate prior to the work commencing.

5. This AGREEMENT shall remain in full force and effect unless and until terminated by either party following a sixty (60) day written notice of intention to terminate; provided, however, that in the event of termination by of FONTANA, FONTANA shall promptly reimburse RANCHO CUCAMONGA, in accordance with the ratio set forth herein, for any theretofore unpaid costs incurred by RANCHO CUCAMONGA as of the date notice of termination is given. In such event, RANCHO CUCAMONGA shall provide FONTANA with documentation as to all such costs.

B. MUTUAL OBLIGATIONS

1. Within sixty (60) days following the Effective Date, and in consideration of funds heretofore expended by RANCHO CUCAMONGA on FONTANA’s behalf and for their mutual benefit, FONTANA agrees to pay an established ratio of cost set forth in Exhibit “A” of the total costs of design, construction and construction inspection of the Signal, as heretofore incurred by RANCHO CUCAMONGA, or the amount of as agreed per respective reimbursement agreement, whichever is less. Thereafter, RANCHO CUCAMONGA shall bill FONTANA semi-annually for the costs of services provided pursuant to this Agreement and shall provide a summary of actual maintenance tasks performed and electrical power costs incurred. Within sixty (60) days of FONTANA’s receipt of each such billing, FONTANA shall pay RANCHO CUCAMONGA for any undisputed costs.
event of a disputed costs, the CITIES’ representatives shall meet and attempt to resolve any such disputes.

2. Neither RANCHO CUCAMONGA nor any officer, employee, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by FONTANA under or in connection with any work, authority, or jurisdiction delegated to FONTANA under this AGREEMENT, or for work performed by RANCHO CUCAMONGA in order to correct deficiencies as described in this AGREEMENT. It is also agreed that pursuant to Government Code Section 895.4, FONTANA shall fully indemnify, defend and hold RANCHO CUCAMONGA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by FONTANA under or in connection with any work, authority, or jurisdiction delegated to FONTANA under this agreement, or for work performed by RANCHO CUCAMONGA in order to correct deficiencies as described in Article 5 of this AGREEMENT.

3. Neither FONTANA nor any officer, employee, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RANCHO CUCAMONGA under or in connection with any work, authority, or jurisdiction delegated to RANCHO CUCAMONGA under this AGREEMENT. It is also agreed that pursuant to Government Code Section 895.4, RANCHO CUCAMONGA shall fully indemnify, defend and hold FONTANA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RANCHO CUCAMONGA under or in connection with any work, authority, or jurisdiction delegated to RANCHO CUCAMONGA under this AGREEMENT.

4. RANCHO CUCAMONGA shall defend, indemnify, and hold harmless FONTANA, its officers and employees, from and against any and all actions, claims, injuries, damages, liabilities, demands, losses, judgments, penalties, expenses and costs including attorney’s fees for staff attorneys and outside counsel (collectively “Liabilities”) arising out of or in any way connected with anything done or omitted to be done by RANCHO CUCAMONGA, its officers, employees, agents, contractors, consultants, subcontractors and subconsultants of any level, in connection with the PROJECT or under or in connection with any work, authority or jurisdiction delegated to RANCHO CUCAMONGA under this AGREEMENT. RANCHO CUCAMONGA’s obligations under this Article apply to FONTANA’s “passive” and “active” negligence, but do not apply to FONTANA’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

5. FONTANA shall defend, indemnify, and hold harmless RANCHO CUCAMONGA, its officers and employees, from and against any and all actions, claims, injuries, damages, liabilities, demands, losses, judgments, penalties, expenses and costs including attorney’s fees for staff attorneys and outside counsel (collectively “Liabilities”) arising out of or in any way connected with anything done or omitted to be done by FONTANA, its officers, employees, agents, contractors,
consultants, subcontractors and subconsultants of any level, in connection with the
PROJECT or under or in connection with any work, authority or jurisdiction
delegated to FONTANA under this AGREEMENT. FONTANA’s obligations under
this Article apply to RANCHO CUCAMONGA’s “passive” and “active” negligence,
but do not apply to RANCHO CUCAMONGA’s “sole negligence” or “willful
misconduct” within the meaning of Civil Code Section 2782.

6. RANCHO CUCAMONGA is an authorized self-insured public entity for purposes
of Professional Liability, General Liability, Automobile Liability and Workers’
Compensation and warrants that through its programs of self-insurance, it has
adequate coverage or resources to protect against liabilities arising out of the
performance of the terms, conditions or obligations of this AGREEMENT.

7. FONTANA is an authorized self-insured public entity for purposes of Professional
Liability, General Liability, Automobile Liability and Workers’ Compensation and
warrants that through its program of self-insurance, it has adequate coverage or
resources to protect against liabilities arising out of the performance of the terms,
conditions or obligations of this AGREEMENT.

8. The responsible party shall keep open book records documenting maintenance of
the SIGNAL which shall be available for inspection at any reasonable time during
business hours.

9. This AGREEMENT shall be governed by and construed in accordance with the
laws of the State of California.

10. This AGREEMENT supersedes any and all other agreements, either oral or in
writing, between RANCHO CUCAMONGA and FONTANA with respect to the
subject matter herein. Each party to this AGREEMENT acknowledges that no
representation by any party which is not embodied herein nor any other
agreement, statement, or promise not contained in this agreement shall be valid
and binding. Any modification to this AGREEMENT shall be effective only if it is in
writing signed by all parties.

11. In the event any legal action becomes necessary to enforce any provision of this
AGREEMENT or to obtain damages due to an alleged breach of any provision of
this AGREEMENT, the prevailing party in such litigation shall be entitled to
reasonable attorney’s fees, court costs, and any and all other costs of litigation
determined to be reasonable by the Court.

Signatures are on the following page.
IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their respective officials thereunto duly authorized.

THE CITY OF RANCHO CUCAMONGA

By: ___________________________
   John R. Gillison
   City Manager

Dated: __________________________

Attest: __________________________
   Janice C. Reynolds, City Clerk

APPROVED AS TO FORM:

By: ___________________________
   James L. Markman
   City Attorney

THE CITY OF FONTANA

By: ___________________________
   Kenneth R. Hunt
   City Manager

Dated: __________________________

Attest: __________________________
   Tonia Lewis, City Clerk

APPROVED AS TO FORM:

By: ___________________________
   Best Best & Krieger
   City Attorney

By: ___________________________
   Debbie M. Brazill
   Deputy City Manager
   Development Services Organization

By: ___________________________
   Ricardo Sandoval
   Director of Engineering/ City Engineer
**EXHIBIT “A”**

**TRAFFIC SIGNAL INSTALLATIONS AND RELATED FACILITIES**

**SCHEDULE I – MAINTAINED BY THE CITY OF RANCHO CUCAMONGA**

**Electrical Power, Maintenance, and Operation Cost Split**

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Rancho Cucamonga</th>
<th>Fontana</th>
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<tbody>
<tr>
<td>1.</td>
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<td>2.</td>
<td>Foothill Boulevard and East Avenue</td>
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<td>3.</td>
<td>Miller Avenue and East Avenue</td>
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**SCHEDULE II – MAINTAINED BY THE CITY OF FONTANA**

**Electrical Power, Maintenance, and Operation Cost Split**

<table>
<thead>
<tr>
<th>No.</th>
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<th>Rancho Cucamonga</th>
<th>Fontana</th>
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<tbody>
<tr>
<td>1.</td>
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ACTION REPORT
September 12, 2017

FROM: Department of Public Works
SUBJECT: Authorize a Cooperative Agreement between the City of Fontana and San Bernardino County for Cherry Avenue Street Improvements

RECOMMENDATION:
1. Approve a Cooperative Agreement between the City of Fontana and San Bernardino County to construct street improvements on Cherry Avenue between Valley Boulevard and Whittram Avenue in the amount of $1,134,625.

2. Authorize the City Manager to execute the Cooperative Agreement between the City of Fontana and San Bernardino County for street improvements.

COUNCIL GOALS:
* To invest in the city’s infrastructure (streets, sewers, parks, etc.) by maintaining and improving the city’s existing infrastructure.
* To concentrate on inter-governmental relations by working cooperatively with neighboring jurisdictions.

DISCUSSION:
The San Bernardino County Public Works Department is planning to construct street improvements on Cherry Avenue between Whittram Avenue and Valley Boulevard. The project will consist of the complete reconstruction of the asphalt pavement, construct minor concrete improvements and install new pavement striping and legends.

In a continued effort to concentrate and promote inter-governmental relations by cooperatively working with neighboring jurisdictions, this Cooperative Agreement has been developed between both respective parties for the project.

Jurisdictional boundaries for Cherry Avenue from San Bernardino Avenue to Valley Boulevard are shared with the City of Fontana and San Bernardino County. Approximately 15% of the total project area is within the City of Fontana city limits.

San Bernardino County will be the Lead Agency in charge of design engineering, advertising, award and administration of the project. The San Bernardino County Engineer’s Estimate for Cherry Avenue is $6,124,239. The agreement allows for a maximum increase of up to 25% ($1,304,135) for potential contract change orders, unforeseen conditions, utility conflicts, etc.

The City of Fontana’s portion is estimated at $907,700, plus an allowable 25% increase ($226,925) bringing the total for Fontana’s portion of this cooperative
agreement to $1,134,625.

Construction is anticipated to begin March 2018 and completion is scheduled for September 2018.

**FISCAL IMPACT:**
Funds are available in current fiscal year budget, Solid Waste Fund 9410311282.

**MOTION:**
Approve staff recommendation.

**ATTACHMENTS:**

<table>
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<th>Description</th>
<th>Type</th>
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<tr>
<td>Cooperative Agreement and Project Vicinity Map</td>
<td>Backup Material</td>
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<tr>
<td>Request for Budget Change</td>
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## FOR COUNTY USE ONLY

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<td>County Department Contract Representative</td>
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<td>FY Amount</td>
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<td>Pavement Reconstruction</td>
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**THIS CONTRACT** is entered into in the State of California by and between the County of San Bernardino, hereinafter called the **COUNTY**, and

**Name**
City of Fontana

**Address**
8353 Sierra Avenue

Fontana, CA 92335

**Telephone**
(909) 350 -6760

Federal ID No. or Social Security No.
95-6004770

**hereinafter called CITY**

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS,** COUNTY and CITY (COUNTY and CITY are also each referred to herein as “Party” and collectively referred to herein as “Parties”) desire to cooperate and jointly participate in a pavement reconstruction project on Cherry Avenue, from Valley Boulevard north to Whittam Avenue, excluding the grade separation at the Burlington Northern Santa Fe Railroad (BNSF) tracks, and Andel Drive, from Cherry Avenue east 0.13 mile (collectively hereinafter referred to as “PROJECT”); and

**WHEREAS,** the PROJECT is primarily in the unincorporated area of the COUNTY and partially within the incorporated area of the CITY, and will be of mutual benefit to the COUNTY and CITY; and

**WHEREAS,** California Streets and Highways Code sections 1685 and 1803 authorize CITY to contract with COUNTY for the maintenance, construction or repair of CITY streets and roads, if the legislative body of CITY
determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and

WHEREAS, the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with COUNTY for the PROJECT; and

WHEREAS, it is anticipated that COUNTY’s share of PROJECT costs will be from COUNTY General Funds and CITY’s share of PROJECT costs will be financed through its local funds; and

WHEREAS, the total PROJECT cost is estimated to be $6,124,239; and

WHEREAS, COUNTY’s share of PROJECT cost is estimated to be $5,216,539 and the CITY’s share of PROJECT cost is estimated at $907,700, as more particularly set forth in Exhibit “A”, which is attached hereto and incorporated herein by this reference; and

WHEREAS, the above-described costs are proportioned based on the work to be performed in each Party’s jurisdiction; and

WHEREAS, COUNTY and CITY desire to set forth the responsibilities and obligations of each as they pertain to such participation, and to the design, construction, and funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

1.1 Act as the Lead Agency in the design, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.) and construction of the PROJECT. Provide plans and specifications for the PROJECT for CITY’s review and approval.

1.2 Construct the PROJECT by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by CITY.

1.3 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, subject to paragraph 3.8 below.

1.4 Obtain a no-cost permit from the CITY for work performed within the CITY’s right-of-way.

1.5 Advertise, award and administer the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code applicable to the COUNTY; and initially fund the PROJECT construction costs with CITY reimbursing COUNTY for its share of cost upon PROJECT completion.

1.6 Require its contractor to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in County Policy Numbers 11-07 and 11-07SP.

1.7 Provide adequate inspection of all items of work performed under the construction contract(s) with COUNTY’s contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by CITY. COUNTY shall provide copies of any records of inspection and materials testing to CITY within ten (10) days of COUNTY’s receipt of written demand from CITY for such records. This shall be included as a PROJECT cost.

1.8 Calculate overall PROJECT COUNTY/CITY share based on the final construction contract cost, which shall include changes made to COUNTY and/or CITY jurisdictions pursuant to paragraphs 3.6, 3.7, 3.8 and 3.9 below. Calculation of PROJECT costs shall be based on work performed within each party’s jurisdiction.

1.9 Based on the COUNTY percentage calculated pursuant to paragraph 1.8, pay its share of the actual PROJECT costs. The actual PROJECT costs shall include the cost of PROJECT design, utility relocation work, construction, construction engineering, inspection, CEQA compliance, and COUNTY overhead costs. COUNTY’s share of PROJECT costs is estimated to be $5,216,539 and shall not exceed $6,520,674 (25% increase over the COUNTY’s PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.16.
1.10 Upon CITY's and COUNTY's acceptance of the PROJECT, submit to CITY an itemized accounting of actual PROJECT costs incurred by COUNTY and an invoice for CITY's share of the actual PROJECT costs relative to work performed in the CITY's jurisdiction. Said invoice shall set forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditure and a copy of the overall CITY/COUNTY share calculation spreadsheet.

2.0 CITY AGREES TO:
2.1 Review and approve the plans and specifications of the PROJECT.
2.2 Provide a no-cost permit to the COUNTY for its work in the CITY's right-of-way.
2.3 Based on CITY percentage calculated pursuant to paragraph 1.8, pay to the COUNTY, on a reimbursement basis, its share of the actual PROJECT costs, which shall include adjustment of all CITY sewer line manholes in the PROJECT area. The actual PROJECT costs shall include the cost of PROJECT design, utility relocation work, construction, construction engineering, inspection, CEQA compliance, and COUNTY overhead costs. CITY's share of PROJECT costs is currently estimated to be $907,700 and shall not exceed $1,134,625 (25% increase over the PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17. CITY shall be responsible for the sum of $907,700, plus its jurisdictional share of any PROJECT cost changes, pursuant to paragraph 1.8 above. Upon CITY's review and approval of invoice, CITY shall pay such costs within sixty (60) days after receipt of the itemized invoice as set forth in paragraph 1.10 of this Agreement.
2.4 Provide a representative who shall have the authority to discuss and attempt to resolve issues concerning the PROJECT with the COUNTY.

3.0 IT IS MUTUALLY AGREED:
3.1 COUNTY agrees to indemnify and hold harmless the CITY and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from COUNTY's negligent acts or omissions which arise from COUNTY's performance of its obligations under this Agreement.
3.2 CITY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of its obligations under this Agreement.
3.3 In the event the COUNTY and/or the CITY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY and/or CITY shall indemnify the other to the extent of its comparative fault.
3.4 In the event of litigation arising from this Agreement, each Party to the Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 3.1, 3.2 and 3.3.
3.5 COUNTY and CITY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and CITY's performance of the terms, conditions or obligations of this Agreement.
3.6 The Parties acknowledge that actual PROJECT costs may ultimately exceed current estimates of PROJECT costs. Any additional PROJECT costs (including, but not limited to, additional PROJECT costs caused by an increase in engineering cost, higher bid prices, change orders, or arising from unforeseen site conditions, including utility relocation (but not from requested additional work by the COUNTY or CITY, which is addressed in paragraph 3.7 below)) over the estimated total of the PROJECT's cost of $6,124,239 (which is the sum of $5,216,539 from COUNTY and $907,700 from CITY) shall be borne by each PARTY based upon where the work is required (i.e. whether the work is required in the COUNTY's or CITY's jurisdiction).
3.7 If either COUNTY or CITY requests additional work that is beyond the scope of the original PROJECT, and not considered by all Parties to be a necessary part of the PROJECT, said work, if approved by both Parties will be paid solely by the party requesting the work.
3.8 In the case wherein one of the Parties owns a utility that needs to be relocated for the PROJECT and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party’s cost. This shall not be included as a PROJECT cost. In the case that a utility relocation is determined to be a PROJECT cost based on that utility having prior rights, the relocation of the utility will be included as a PROJECT cost for which the COUNTY and CITY will be responsible for funding for work located within their respective boundaries.

3.9 As design progresses, if it is found by COUNTY’s Director of Public Works, or the Director’s designee, that a cost overrun of more than 25% of the estimated total of the PROJECT costs will occur, COUNTY shall provide CITY notice of this fact and COUNTY and CITY shall endeavor to agree upon an alternative course of action, including amending the amounts and Exhibit A with revised cost estimates. If, after thirty (30) days of COUNTY notice, an alternative course of action is not mutually agreed upon in writing between the COUNTY and CITY, this Agreement shall be deemed to be terminated by mutual consent.

3.10 COUNTY shall notify CITY of the bids received and the amounts thereof. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party at a reasonable time prior to the awarding of a contract to construct the PROJECT to avoid any detrimental reliance by either Party, contractor or potential contractor.

3.11 If after opening bids for the PROJECT, it is found that the responsive and responsible low bid amount is 25% or less over the construction cost shown in Exhibit A, COUNTY may award the contract.

3.12 If, upon opening of bids, it is found that the responsive and responsible low bid amount is over 25% more than the construction cost shown in Exhibit A, COUNTY shall not award the contract unless: 1) COUNTY receives written permission from the CITY’s Director of Public Works or designee, to proceed with the award; and 2) COUNTY’s Board of Supervisors approves the award of the construction contract. If the above described conditions are not met, COUNTY and CITY shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If, after thirty (30) days of the bid opening, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

3.13 In the event that change orders are required during the course of the PROJECT, said change orders must be in form and substance as set forth in Exhibit “B”, which is attached hereto and incorporated herein by this reference, and approved by both COUNTY and CITY. Contract Change Order forms will be delivered by fax and must be returned within two (2) days. The CITY shall not unreasonably withhold approval of change orders. If a CITY disapproved or modified change order is later found to be a cost of the PROJECT, then the CITY shall be responsible for any costs, awards, judgments or settlements associated with the disapproved or modified change order.

3.14 This Agreement may be cancelled upon thirty (30) days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after COUNTY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, including termination pursuant to paragraphs 3.9, 3.10 and 3.12 above, all PROJECT expenses incurred prior to the effective date of cancellation/termination shall be paid by the Parties in the same proportion to their contribution for the PROJECT. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties first satisfying CEQA. As provided in this paragraph, the Agreement may be cancelled with or without cause, before, during and after CEQA review/approval.

3.15 Except as provided in Paragraph 3.14, and except for the Parties’ operation, maintenance and indemnification obligations contained herein which shall survive termination, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the CITY for its share of the PROJECT costs.

3.16 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.17 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY and COUNTY concerning the interpretation or enforcement of this Agreement, or
which arises out of or is in any way connected with this Agreement or the PROJECT, shall be
instituted and tried in the appropriate state court, located in the County of San Bernardino, California.

3.18 Time is of the essence for each and every provision of this Agreement.

3.19 Since the Parties or their agents have participated fully in the preparation of this Agreement, the
language of this Agreement shall be construed simply, according to its fair meaning, and not strictly
for or against any Party. Any term referencing time, days or period for performance shall be deemed
COUNTY work days. The captions of the various articles and paragraphs are for convenience and
ease or reference only, and do not define, limit, augment, or describe the scope, content, or intent of
this Agreement.

3.20 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same
or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed
by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.21 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise
unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of
this Agreement is frustrated.

3.22 This Agreement may be signed in counterparts, each of which shall constitute an original.

3.23 This Agreement will be effective on the date signed and approved by both Parties and shall conclude
upon satisfaction of the terms identified in paragraph 3.15 or October 30, 2022 (whichever occurs
first).

3.24 The Recitals are incorporated into the body of this Agreement.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both Parties
EXHIBIT A

ESTIMATE OF PROJECT COSTS FOR COUNTY OF SAN BERNARDINO/CITY OF FONTANA PAVEMENT RECONSTRUCTION IN THE FONTANA AREA

CHERRY AVENUE AND ANDEL DRIVE

<table>
<thead>
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<th>DESCRIPTION</th>
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EXHIBIT B

CONTRACT CHANGE ORDER REVIEW/APPROVAL
PROJECT: CHERRY AVENUE AND ANDEL DRIVE
COUNTY OF SAN BERNARDINO CONTRACT #
File: H14883

Proposed Contract Change Order No. has been reviewed in accordance with the existing agreements with the City of FONTANA and County of San Bernardino for the above project and the following shall apply:

DATE OF CITY OF FONTANA ACTION: _____/____/____

☐ APPROVED for Implementation with 100% Participation by CITY OF FONTANA

☐ APPROVED Subject to Comments/Revisions Accompanying This Document

☐ APPROVED With Limited Funding Participation by CITY OF FONTANA
☐ _____% of Actual Cost to be Funded by CITY OF FONTANA
☐ CITY OF FONTANA Participation Not to Exceed $__________________________

☐ DISAPPROVED - Not Acceptable to CITY OF FONTANA

Note: Approval under any of the above conditions shall in no case be construed as agreement to increase the total financial participation beyond that prescribed in the existing CITY OF FONTANA and COUNTY agreement without a separate amendment to said agreement. Net increases in costs deriving from this and previously approved Contract Change Orders shall not cause the total construction costs to exceed the sum of the authorized contract total and contingency amounts.

Comments, as follows and/or attached, are conditions of the above action?  ☐ YES  ☐ NO

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

SIGNED: _____________________________________________________________

TITLE: _______________________________________________________________

Distribution:
Signed Original Returned to Resident Engineer (FAX # 909-387-7927)
Signed Original for CITY OF FONTANA File

Revised 01/10/2017
## Request for Budget Change

**Budget Use Only**

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<thead>
<tr>
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<th>Posted by:</th>
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* □ Operating Budget  
X Capital Budget

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<th>* Account #</th>
<th>* Requested Changes</th>
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### Expenditures/Transfers Out:

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### Reason for Change:

City Council Action Date:

### Signatures:

- Prepared By: ___________________________  
- Approved By: ___________________________  
- Date: ___________________________

- City Manager / Management Services Director: ___________________________
- Agenda Item #: ___________________________
- Agenda Date: ___________________________

### Procedures:

1. Enter information in fields marked *, the blue shaded areas contain formulas and will auto fill.
2. Changes that affect fund balance must go to City Council for approval.
3. Changes that go between funds must go to City Council for approval.
4. Changes that go between departments must go to City Council for approval.
5. Changes between projects must go to the City Manager for approval.
6. Budget Change Form must be submitted with appropriate attachments i.e. Agenda Item, Change Order
7. This form must be an original, completely filled out, and signed by an authorized employee

Questions?? Contact Fabiola Barrita - Operating Budget X 6779, Lynn Rogers - Capital Budget X 7669 or Cybele Collins x 7690.
ACTION REPORT
September 12, 2017

FROM: Department of Public Works

SUBJECT: Final Acceptance of the Cured In Place Pipe (CIPP) Spot Repair Project SB-20-PW-16

RECOMMENDATION:

1. Final Acceptance of the construction contract for the Cured In Place Pipe (CIPP) Spot Repair Project SB-20-PW-16 in the amount of $165,407.51.

2. Authorize the Public Works Director to file a Notice of Completion and release the 5% retention.

COUNCIL GOALS:

* To invest in the city's infrastructure (streets, sewers, parks, etc.) by maintaining and improving the city's existing infrastructure.

DISCUSSION:

On July 12, 2016, the City Council awarded a construction contract to Hoffman Southwest Corporation dba Professional Pipe Services, in the amount of $186,405 and authorized a 10% contingency fund in the amount of $18,640 for the construction of the Cured In Place Pipe (CIPP) Spot Repair Project SB-20-PW-16.

The project utilized the Cured in Place Pipe (CIPP) trenchless technology methods for repairing 79 separate locations within the sewer network. The CIPP product is a flexible felt tube liner infused with curing resin that is placed within the host pipe from the nearest adjacent manholes. This method provides for an expedited construction schedule and less impact to the community than traditional open cut and excavation methods.

There were two (2) Contract Change Orders necessary to complete the project, which were due to final quantity adjustments during construction. The change orders resulted in an overall contract reduction of $22,232.50. The project was completed within the allocated time frame and contract amount and did not require contingency funds to be used.

FISCAL IMPACT:

None

MOTION:

Approve staff recommendation.

SUBMITTED BY: REVIEWED BY:
APPROVED BY:

Chuck Hays
Public Works Director

Debbie M. Brazill
Deputy City Manager

Kenneth R. Hunt
City Manager

ATTACHMENTS:

<table>
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<th>Description</th>
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ITEM: CC-E
ACTION REPORT
September 12, 2017

FROM: Department of Community Development

SUBJECT: Electric Fence Ordinance Amendment (Master Case [MCN] No. 13-001, Zoning Code Amendment [ZCA] No. 16-004 and Specific Plan Amendment [SPA] No. 15-003)

RECOMMENDATION:

1. Determine that ZCA No. 16-004 and SPA No. 15-003 will not have a significant effect on the environment pursuant to the California Environmental Quality Act (CEQA) 15061(b)(3) (Review of Exemption), and direct staff to file a Notice of Exemption;

2. Waive further reading of and introduce Ordinance No. ____ , an Ordinance of the City of Fontana approving ZCA No. 16-004, amending the Zoning and Development Code (Chapter 30) for Light Industrial (M-1) and General Industrial (M-2) zoning districts and permitting electric fences in the General Commercial (C-2) zone subject to the electric fence development standards and amending Miscellaneous Provisions and Offenses (Chapter 16) text of the Fontana Municipal Code in regard to electric fences, and that the reading of the title constitutes the first reading thereof.

3. Waive further reading of and introduce Ordinance No. ____ , an Ordinance of the City of Fontana approving SPA No. 15-003, amending the Southwest Industrial Park Specific Plan (SWIP) text in regard to electric fences for the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, and Jurupa South land use districts of the SWIP Specific Plan, and that the reading of the title constitutes the first reading thereof.

COUNCIL GOALS:

* To create a team by working together to provide stability and consistent policy direction.
* To create a team by communicating Goals and Objectives to all sectors of the community.

DISCUSSION:

City Council Meeting on February 28, 2017

On February 28, 2017, the City Council held a public hearing on Master Case No. (MCN) 13-001, Specific Plan Amendment (SPA) No. 15-003, and Zoning Code Amendment (ZCA) No. 16-004. The Planning Commission’s recommendation on the code changes was to deny the proposed changes to the electric fence regulations. After opening the public hearing and taking public comments, the City Council deliberated on the project and voted five (5) to zero (0), to continue the item to a
future City Council meeting and create a subcommittee with two (2) City Council members to review and provide revised electric fence ordinance modifications.

City Council Meeting on March 14, 2017
At the March 14, 2017, City Council meeting, Councilmembers John Roberts and Jesse Armendarez were appointed to the City Council Subcommittee to review and recommend modifications to the electric fence Ordinances.

Subcommittee meeting on March 29, 2017
On March 29, 2017, the Subcommittee met to discuss potential changes to the electric fence ordinances. Councilman Roberts and Councilman Armendarez were in attendance along with representatives from the Police Department, Fontana Fire District, Building & Safety and Planning Divisions. At this meeting, the Subcommittee deliberated on the following items along with other specific requests by the applicant:

- Allowing electric fences adjacent to residential uses;
- Allowing electric fences in front yard setbacks including along major streets such as Cherry Avenue, Citrus Avenue, Slover Avenue;
- Allowing electric fences in Commercial zones;
- Allowing electric fences in front and side yard setbacks without screening;
- Allowing electric fences in side yards of existing industrial uses without screening;
- Allowing over the counter building permits without Director’s determination;
- Allowing electric fences by right in the Southwest Industrial Park Specific Plan and other manufacturing and industrial zones;

After much discussion in regard to the above listed items, staff was directed to modify the electric fence ordinances based on the discussion at the meeting and report back to the subcommittee at a future meeting date scheduled for April 20, 2017.

Subcommittee Meeting Date on April 20, 2017
On April 20, 2017, the Subcommittee met for a second time to review and discuss changes proposed to the electric fence Ordinances 1684 and 1686 based on the previous meeting. The Subcommittee reviewed the amendments crafted by City staff and discussed minor modifications to the proposed amended documents. In summary, the subcommittee recommended some of the following concessions for electric fences:

- Electric fences may be approved adjacent to residential property, as long as the fence is installed behind a block wall, and can be approved through the plan check process;
- Electric fences may be installed adjacent to existing chain link fencing as long
as the chain link is covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen, and can be approved through the Plan Check process;

- Electric fences may be permitted along Major and Primary Highways/Freeways at the discretion of the Community Development Director by utilizing an approved durable wind resistant mesh or other material that acts as a barrier and a screen;

- Electric fences proposed adjacent to the PE Trail shall be located behind a tubular steel fence with pilasters or a solid block wall, at the discretion of the Community Development Director.

City Council Meeting on June 13, 2017
On June 13th, 2017, the City Council held a public hearing on Master Case No. (MCN) 13-001, Specific Plan Amendment (SPA) No. 15-003, and Zoning Code Amendment (ZCA) No. 16-004. The City received a letter from the applicant opposed to the recommended changes by the subcommittee. At this meeting, staff was directed to meet with the Subcommittee and the applicant to further discuss the recommended changes to the electric fence ordinances and to bring this item back to a future City Council meeting. The City Council deliberated on the project and voted three (3) to two (2), to continue the item to a future subcommittee meeting, meet with the applicant in regard to the electric fence ordinance modifications, and bring the item back again to the City Council.

Subcommittee Meeting Date on July 10th, 2017
On July 10th, 2017, the Subcommittee met with the applicant and staff to review and discuss changes as proposed by the applicant to the electric fence ordinances. The subcommittee reviewed the amendments and discussed minor modifications to the proposed amended documents. After much discussion with the applicant and city staff, the subcommittee chose not to recommend any major changes to the previously proposed amendments.

ENVIRONMENTAL:
The proposed Zoning Code Amendment and Specific Plan Amendment to allow electric fences is Categorically Exempt, pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act. A preliminary exemption assessment (Attachment No. 9) and notice of exemption (Attachment No. 10) has been prepared for the City Council’s consideration.

FISCAL IMPACT:
No negative impact to the General Fund.

MOTION:
Approve the Subcommittee recommendation.
### ATTACHMENTS:

<table>
<thead>
<tr>
<th>Description</th>
<th>Type</th>
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<tbody>
<tr>
<td>Attachment No. 1 - Minutes from February 28th, 2017, City Council Meeting</td>
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<tr>
<td>Attachment No. 2 - Minutes from March 14th, 2017 City Council Meeting</td>
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<td>Attachment No. 3 Minutes from June 13th, 2017, City Council Meeting</td>
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<td>Attachment No. 4 - Ordinance No. (ZCA No. 16-004 – Chapters 16 and 30)</td>
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<td>Attachment No. 4 - Exhibit A (Proposed revisions to the Zoning and Development Code)</td>
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<td>Attachment No. 5 - Ordinance No. (SPA No. 15-003 – SWIP Specific Plan)</td>
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<td>Attachment No. 5 - Exhibit A (Proposed revisions to electric fence text in SWIP Specific Plan)</td>
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<td>Attachment No. 6 - Revisions to the Miscellaneous Provisions and Offenses Code (Chapter 16)</td>
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<td>Attachment No. 7 - Existing Ordinance No. 1686 Electric Fences City Wide</td>
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<td>Attachment No. 8 - Existing Ordinance No. 1684 Electric Fences in SWIP S.P.</td>
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<td>Attachment No. 9 - Preliminary Exemption Assessment</td>
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<td>Attachment No. 10 - Notice of Exemption</td>
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<td>Attachment No. 11 - Public Hearing Notice</td>
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<td>Attachment No. 12 - Applicant Opposition Letter dated June 9, 2017</td>
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**ITEM: PH-A**
B. A Request to Amend the SWIP Specific Plan (SPA No. 15-003) and the Development Code (ZCA No. 16-04) to Modify Development Standards for Electric Fences (MCN 13-001)

Mayor Warren opened Public Hearing Item PH-B.

Senior Planner Paul Gonzales presented the staff report.

Council Member Tahan stated he’s very familiar with this issue; he asked the applicant if he has seen the standard. Council Member Tahan stated he has been out there with the owner and staff, and feels this is taking Fontana backwards. He is disappointed that people think they can build something like this in Fontana.

Mayor Warren stated that people have a right to come before the City Council if they do not agree with the Planning Commission’s decision.

Council Member Armendarez spoke on people having a right to secure their property in a way they see fit as long as it does not deter from aesthetics. He would like to see staff work with business owners to come to a compromise to allow them to protect themselves with a different mechanism in place for screen besides a block wall. He believes it should be aesthetically pleasing. He would like to tabl this to come up with a compromise that is to the satisfaction of the city and to the applicant.

Mayor Pro Tem Sandoval asked about the zoning on the residence on Beech Avenue. Senior Planner Gonzales stated that it is legal non-conforming for residence.

Council Member Roberts clarified that when you make a general statement on electric fence, the public visualizes Jurassic Park. We are dealing with a 12-volt system and the “electric fence” sign is a deterrent. He agrees with Council Member Armendarez that there is probably some middle ground.

Council Member Tahan asked if current code allows electric fences in SWIP.

Senior Planner Gonzales answered yes.

Council Member Tahan asked if a business goes to Planning about an electric fence, is there additional screening required if they are next to a residence.
Senior Planner Gonzales stated that if it is next to a residence, they are not permitted to have an electrical fence at all.

Council Member Tahan asked if this amendment will allow any commercial business to put up an electrical fence.

Senior Planner Gonzales stated that was correct.

Council Member Tahan asked how many applications there have been in the past 5-6 years.

Senior Planner Gonzales stated that there have been 12 applications, of those 12, six have been approved; four are out for correction on the screen walls; and two were denied because they were next to non-conforming residences.

Council Member Tahan stated that businesses have a right to protect their property but this should not be done city wide because it affects the quality of life and businesses within the city.

Mayor Warren suggested tabling this item and forming a sub-committee so that all concerns are addressed.

City Attorney Jeff Ballinger stated that the City Council can give direction to form a sub-committee; if it is a sub-committee made up of two City Council members and they invite members of the public to participate, it is not subject to the Brown Act; or the City Council can identify which members of the public to participate on the committee, then it will be subject to the Brown Act. If the City Council is so inclined, he suggest direction be given to staff to bring back at the next City Council meeting to formally form and fill the committee.

Mayor Pro Tem Sandoval commented that businesses are important, but the public safety is more important and they need to be included in this committee too.

No one spoke in favor or opposition.

The Public Hearing was closed

**ACTION:** Motion was made by Mayor Warren, and seconded by Council Member Roberts, and passed by a 5-0 to table this item to a future date. (AYES: Warren, Roberts, Tahan and Ammendarez Sandoval; NOES: None) as follows:

1. Determine that ZCA No. 16-004 and SPA No. 15-003 are statutorily exempt pursuant to Section 15270 (Projects Which Are Disapproved) from the California Environmental Quality Act (CEQA), and direct staff to file a Notice of Exemption;

2. Deny ZCA No. 16-004, a request to amend the Development Code (Chapter 30 of the Municipal Code) to allow electric fencing and standards within all permitted and conditionally permitted land uses located in the General Commercial (C-2) zone, and amend the development standards for electric fencing in the Light Industrial (M-1) and
General Industrial (M-2) zoning districts as depicted on the most recently adopted Zoning District Map;

3. Deny SPA No. 15-003, a request to amend the electric fence standards in the Southwest Industrial Park Specific Plan (SWIP).

City Manager Ken Hunt stated he will have an item on the next City Council agenda to create a sub-committee on the electric fence issue.

Mayor Warren thanked Mr. Copeland from the Fontana Unified School District for coming; and she thanked the applicant.

Council Member Tahan requested a Workshop instead of a sub-committee to get the issue resolved faster.

Mayor Warren stated that we need collective ideas to come together and then come back to the City Council through the Workshop process.
ELECTED OFFICIALS COMMUNICATIONS/REPORTS:
Regular City Council Meeting - September 12, 2017

A. Discussion and Possible Action Regarding Creating an ad-hoc Subcommitte for Electric Fences Discussions

City Attorney Ballinger announced that item "EOC-A" did not require a motion to be made since it was just nominations.

ACTION: Appoint Council Members Roberts and Armendarez to the Subcommittee for Electric Fences (Vote 3-2, AYES: Warren, Roberts and Armendarez; NOES: Sandoval and Tahan).
PUBLIC HEARINGS:

A. Master Case No. (MCN) 13-001, Zone Change Amendment (ZCA) No. 16-004, and Specific Plan Amendment (SPA) No. 15-003, Amendments to Modify Existing Development Standards for Electric Fences.

Mayor Warren asked that the item be pulled and sent back to the sub-committee to include discussions with the applicant.

Mayor Pro Tem Sandoval asked why the applicant was not included in the sub-committee meetings.

Council Member Tahan stated that the applicant is disrespectful of staff and read a letter that the applicant sent to City Manager Hunt.

Council Member Tahan stated that this item has been back and fourth with staff and the Planning Commission for years and that the Council should uphold staff’s and Planning Commissions recommendation.

Council Member Tahan praised staff for their hard work on this item.

Council Member Roberts stated that they have received staff’s recommendation and should now meet with the applicant.

Council Member Armendarez stated that discussion with the sub-committee did take place and would now like to meet with the applicant.

A letter of opposition was received from The Electric Guard Dog.

ACTION: Motion was made by Mayor Warren and seconded by Council Member Roberts, and passed by a 3-2 vote to pull Public Hearing Item “PH-A” and send it back to the sub-committee (AYES: Warren, Roberts, and Armendarez; NOES: Sandoval, Tahan)
AN ORDINANCE OF THE CITY OF FONTANA TO AMEND TEXT IN CHAPTER 16-12 (MISCELLANEOUS PROVISIONS AND OFFENSES) AND CHAPTER 30-218 (FENCES AND WALLS) TO ALLOW ELECTRIC FENCING WITHIN THE GENERAL COMMERCIAL (C-2) ZONING DISTRICT, AND AMEND CHAPTER 30-256 (FENCES AND WALLS) TO AMEND ELECTRIC FENCING STANDARDS WITHIN THE LIGHT INDUSTRIAL (M-1) AND GENERAL INDUSTRIAL (M-2) ZONING DISTRICTS (ZCA NO. 16-004).

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. ZCA No. 16-004 is consistent with the goals and policies of the General Plan.

Section 2. ZCA No. 16-004 is hereby approved and the Zoning and Development Code is hereby amended to include language in “Exhibit A” attached hereto.

Section 3. Any provision of this Ordinance which is declared by a court of competent jurisdiction to be void, invalid or unlawful may be stricken from this Ordinance and the remainder of this Ordinance enforced in accordance with its terms. The Council declares that it would have adopted this Ordinance, such severance notwithstanding.

Section 4. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a local newspaper of general circulation, published and circulated in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED this 12th day of September, 2017.

READ AND APPROVED AS TO LEGAL FORM:

Attachment No. 4
Page 1 of 2
City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council of the City of Fontana, do hereby certify that the foregoing Ordinance is the actual Ordinance introduced by the City Council at a regular meeting on the 12th day of September, 2017, and finally passed and adopted not less than five (5) days thereafter on the 26th day of September by the following vote to-wit:

AYES:
NOES:

ABSENT:

____________________________________
City Clerk of the City of Fontana

____________________________________
Mayor of the City of Fontana

ATTEST:

____________________________________
City Clerk of the City of Fontana
ZONING AND DEVELOPMENT CODE – Section 30-218(d) – C-1 and C-2 Zones

Sec. 30-218. – Fences and walls.

(d) **Electric Fencing.**

(1) **Definition.** For the purpose of this section, an electric fence is defined as any bare wire or conductor which is supported on insulators and is located outdoors within eight feet of the ground or a walking surface and is attached to a post, fence, wall, or structure, and which is capable of being energized from any electrical source, including batteries, unless such bare wire or conductor is guarded against accidental contact by forms of enclosures approved by the current edition of the National Electrical Code. Not included in this definition of electric fence are wires or conductors utilized for railway signaling and communication installations, installations under exclusive control of electric utilities, communication equipment under exclusive control of communication utilities and bare conductors which are specifically permitted in the current edition of the National Electrical Code.

a. **Location:**
   i. Project site is zoned General Commercial (C-2), and adhere to all regulations and development standards within the City of Fontana Zoning and Development Code (Chapter 30).
   ii. Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screening shall be approved by the Director of Community Development.
   iii. Electric fences shall be monitored subject to Chapter 22, Article IV (Burglary, Robbery, and Panic Alarms: Verified Burglary and Fraudulent Verified Burglary Alarms) of the Fontana Municipal Code.
   iv. Electric fences shall be installed behind an approved perimeter wall/fence with a minimum height of six (6) feet.
   v. Electric fencing is prohibited in Community Commercial (C-1) and Regional Mixed Use (RMU) zoned properties within the City of Fontana.
vi. No electric fences may be permitted within the front yard setback or street yard setback.

vii. The electrical security fence proposed adjacent to a sidewalk must be installed behind the side yard and front yard setback and a solid masonry wall.

b. Height. Electric fences shall have a maximum height of ten (10) feet.


d. Perimeter Fence or Wall. The electrical security fence is not permitted as a perimeter fence or wall.

e. Warning Signs.

i. Electric fences shall be clearly identified with warning signs of a maximum of nine (9) square feet, prepared in English and Spanish that read: “Warning –Electric Fence” at intervals of not less than 60 feet.

ii. Warning signs shall be black typewritten text with a yellow or white background.

iii. Warning signs shall not advertise or provide contact information of the electric fence manufacturer.

g. Emergency Access.

i. An emergency Knox Box or any other similarly approved device (e.g. Rapid Emergency Access Control Transmitter (REACT) System) must be installed at every gate providing access to a property secured by an electric fence to allow fire department, police department, and/or any other emergency responder access.

ii. In the event that emergency access by emergency responders (i.e. Police Department, Fire Department, etc.) to a property where a permitted electric fence has been installed and is operating, is required due to an emergency or urgent circumstances, and the Knox Box or other similarly approved device is absent or non-functional, and an owner, manager, employee, custodian or any other person with control over the property is not present to disable the electric fence, emergency responding personnel shall be authorized to disable the electric fence in order to gain access to the property. As a condition of permit issuance, all applicants issued permits to install or use an electric fence as provided herein agree to waive any and all claims for damages to the electric fence against...
emergency responding units and/or personnel under such circumstances.

h. Electrification. The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery is charged primarily by a solar panel. However the solar panel may be augmented by a commercial trickle charger.

i. Indemnification. The applicant/property owner agrees to defend, indemnify, and hold harmless the City of Fontana or its agents, officers, and employees from any claim, action or proceeding against the City of Fontana, or its agents, officers, or employees resulting from the approval and installation of an electrical security fence. The City of Fontana shall promptly notify the applicant/property owner of any claim, action, or proceeding and the City of Fontana shall cooperate fully in the defense. If the City of Fontana fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City of Fontana.

j. Insurance. Prior to the approval of any request to install an electrical security fence within the City of Fontana, the applicant/property owner shall provide to the City a certificate of commercial general liability insurance covering third party liability risks in a minimum amount of $1 million combined single limit per occurrence for bodily injury, personal injury, and property damage insurance with the City named as an additional insured party.

k. Landscaping. Addition of the electrical security fence shall in no way preclude the installation and maintenance of required landscaping.

l. All electric fenced areas shall be kept free of weeds and other debris that may constitute a fire hazard.

m. Any contractor/installer of an electric fence found in violation of this section of the Zoning and Development Code may be subject to a misdemeanor as described in Section .n_ below.

n. Violation; Misdemeanor. It shall be unlawful, and a misdemeanor for any person to install, maintain or operate an electric fence in violation of these development standards.

(2) Plan Check Approval. The following requests for an electric security fence may be approved through the plan check process in the C-2 zone under the following circumstances:

a. Adjacent to Residential. An electric fence may be installed on properties that touch, join at the edge or border, or share a common property line with an existing non-conforming residential land use as long as the electric fence is installed behind an approved solid block wall with a minimum height of six (6) feet;
b. **Installed adjacent to Previously Approved Chain Link Fencing.** Electric fences installed adjacent to previously approved chain link fence shall be located behind the chain link fence and the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen.

c. **Behind Front and Side Yard Setbacks.** An electric fence proposed behind the front and/or side yard setback shall be located behind an approved wall or fence. If the electric fence is placed on an approved chain link fence the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen. On corner lots, the electric fence shall be angled inward to the property.

(3) **Director Determination.** An electric fence may be permitted in the C-2 Zone at the discretion of the Community Development Director or designee through the Director’s Determination review process under the following circumstances:

a. **Along Major and Primary Highways/Freeways.** Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screen shall be approved by the Director of Community Development and may utilize an approved durable, wind resistant mesh or other material that acts as a barrier and a screen.

b. **Along the Pacific Electric (PE) Trail.** Electric fences proposed adjacent to the PE Trail shall be located behind a tubular steel fence w/ pilasters or a solid block wall.

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Add the following language to the amendment:

*Any references to “electric fence” in the C-1 and C-2 Zones in Article VI (Commercial and Mixed Use Zoning District) of the zoning and Development Code shall be deleted in its entirety and shall be replaced with this Ordinance.*
Sec. 30-256. - Fences and walls.

(d) **Electric Fencing.**

Definition. For the purpose of this section, an electric fence is defined as any bare wire or conductor which is supported on insulators and is located outdoors within eight feet of the ground or a walking surface and is attached to a post, fence, wall, or structure, and which is capable of being energized from any electrical source, including batteries, unless such bare wire or conductor is guarded against accidental contact by forms of enclosures approved by the current edition of the National Electrical Code. Not included in this definition of electric fence are wires or conductors utilized for railway signaling and communication installations, installations under exclusive control of electric utilities, communication equipment under exclusive control of communication utilities and bare conductors which are specifically permitted in the current edition of the National Electrical Code.

(2) **An electrical security fence will be permitted at the discretion of the Community Development Director or his designee through the Director’s Determination review process subject to all of the following:**

a. Location:

   viii. Project site is zoned light industrial (M-1) or heavy industrial (M-2), and adhere to all regulations and development standards within the City of Fontana Zoning and Development Code (Chapter 30).

   ix. Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screening shall be approved by the Director of Community Development.

   x. Electric fences shall be monitored subject to Chapter 22, Article IV (Burglary, Robbery, and Panic Alarms: Verified Burglary and Fraudulent Verified Burglary Alarms) of the Fontana Municipal Code.

   xi. An electric fence may be installed on properties that do not touch, join at the edge or border, or share a common property line with an existing residential land use or a residential zoning district.

   xii. Electric fences shall be installed behind an approved perimeter wall/fence with a minimum height of six (6) feet.

   xiii. *No electric fences may be permitted within the front yard setback or street yard setback.* Electric security fence is not permitted within the front setback or street side yard setback.

   xiv. The electrical security fence proposed adjacent to a sidewalk must be installed behind the side yard and front yard setback.
and a solid masonry wall.

b. Height. Electric fences shall have a maximum height of ten (10) feet.


d. Project Site. Electric fencing on project sites less than one (1) acre requires approval of a Minor Use Permit (MUP).

e. Perimeter Fence or Wall. The electrical security fence is not permitted as a perimeter fence or wall.

f. Warning Signs.
   i. Electric fences shall be clearly identified with warning signs of a maximum of nine (9) square feet, prepared in English and Spanish that read: “Warning –Electric Fence” at intervals of not less than 60 feet.
   ii. Warning signs shall be black typewritten text with a yellow or white background.
   iii. Warning signs shall not advertise or provide contact information of the electric fence manufacturer.

g. Separation. Horizontal separation between the perimeter fence and the electrical security fence shall comply with the IEC standards.

h. Emergency Access.
   i. An emergency Knox Box or any other similarly approved device (e.g. Rapid Emergency Access Control Transmitter (REACT) System) must be installed at every gate providing access to a property secured by an electric fence to allow fire department, police department, and/or any other emergency responder access.
   ii. In the event that emergency access by emergency responders (i.e. Police Department, Fire Department, etc.) to a property where a permitted electric fence has been installed and is operating, is required due to an emergency or urgent circumstances, and the Knox Box or other similarly approved device is absent or non-functional, and an owner, manager, employee, custodian or any other person with control over the property is not present to disable the electric fence, emergency responding personnel shall be authorized to disable the electric fence in order to gain access to the property. As a condition of permit issuance, all applicants issued permits to install or use an electric fence as provided herein agree to waive any and all claims for damages to the electric fence against emergency responding units and/or personnel under such circumstances.

i. Electrification: The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery is charged primarily by a solar panel. However the solar panel may be augmented by a commercial trickle charger.

j. Indemnification. The applicant/property owner agrees to defend,
indemnify, and hold harmless the City of Fontana or its agents, officers, and employees from any claim, action or proceeding against the City of Fontana, or its agents, officers, or employees resulting from the approval and installation of an electrical security fence. The City of Fontana shall promptly notify the applicant/property owner of any claim, action, or proceeding and the City of Fontana shall cooperate fully in the defense. If the City of Fontana fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City of Fontana.

k. Insurance. Prior to the approval of any request to install an electrical security fence within the City of Fontana, the applicant/property owner shall provide to the City a certificate of commercial general liability insurance covering third party liability risks in a minimum amount of $1 million combined single limit per occurrence for bodily injury, personal injury, and property damage insurance with the City named as an additional insured party.

l. Landscaping. Addition of the electrical security fence shall in no way preclude the installation and maintenance of required landscaping.

m. All electric fenced areas shall be kept free of weeds and other debris that may constitute a fire hazard.

n. Any contractor/installer of an electric fence found in violation of this section of the Zoning and Development Code may be subject to a misdemeanor as described in Section o. below.

o. Violation; Misdemeanor. It shall be unlawful, and a misdemeanor for any person to install, maintain or operate an electric fence in violation of these development standards.

(1) Plan Check Approval. The following requests for an electric security fence may be approved through the plan check process in the M-1 and M-2 zones under the following circumstances:

a. Adjacent to Residential. An electric fence may be installed on properties that touch, join at the edge or border, or share a common property line with an existing non-conforming residential land use as long as the electric fence is installed behind an approved solid block wall with a minimum height of six (6) feet;

b. Installed adjacent to Previously Approved Chain Link Fencing. Electric fences installed adjacent to previously approved chain link fence shall be located behind the chain link fence and the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen.
c. **Behind Front and Side Yard Setbacks.** An electric fence proposed behind the front and/or side yard setback shall be located behind an approved wall or fence. If the electric fence is placed on an approved chain link fence the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen. On corner lots, the electric fence shall be angled inward to the property.

(2) **Director Determination.** An electric fence may be permitted in the M-1 and M-2 Zones at the discretion of the Community Development Director or designee through the Director's Determination review process under the following circumstances:

   a. **Along Major and Primary Highways/Freeways.** Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screen shall be approved by the Director of Community Development and may utilize an approved durable, wind resistant mesh or other material that acts as a barrier and a screen.

   b. **Along the Pacific Electric (PE) Trail.** Electric fences proposed adjacent to the PE Trail shall be located behind a tubular steel fence w/ pilasters or a solid block wall.

Add the following language to the amendment:

Any references to “electric fence” in the M-1 and M-2 Zones in Article VII (Industrial Zoning District) of the zoning and Development Code shall be deleted in its entirety and shall be replaced with this Ordinance.
ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF FONTANA APPROVING SPECIFIC PLAN AMENDMENT (SPA) NO. 15-003, TO AMEND ELECTRIC FENCE STANDARDS WITHIN THE SPEEDWAY INDUSTRIAL, FREEWAY INDUSTRIAL, SLOVER WEST, SLOVER EAST, SLOVER CENTRAL, JURUPA NORTH, AND JURUPA SOUTH LAND USE DISTRICTS OF THE SOUTHWEST INDUSTRIAL PARK (SWIP) SPECIFIC PLAN.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. SPA No. 15-003 is consistent with the goals and policies of the General Plan.

Section 2. SPA No. 15-003 is hereby approved and the SWIP Specific Plan is hereby amended to include language in "Exhibit A" attached hereto and as amended below with bolded, italicized, and stricken out language.

Section 3. Any provision of this Ordinance which is declared by a court of competent jurisdiction to be void, invalid or unlawful may be stricken from this Ordinance and the remainder of this Ordinance enforced in accordance with its terms. The Council declares that it would have adopted this Ordinance, such severance notwithstanding.

Section 4. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a local newspaper of general circulation, published and circulated in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED by the City Council of the City of Fontana, California, at a regular meeting held on the 12th day of September, 2017.

READ AND APPROVED AS TO LEGAL FORM:

__________________________________________________
City Attorney
Ordinance No. ____________

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council of the City of Fontana, do hereby certify that the foregoing Ordinances the actual Ordinance introduced by the City Council at a regular meeting on the 12th day of September, 2017, and finally passed and adopted not less than five (5) days thereafter on the 26th day of September, 2017, by the following vote to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

_________________________________
City Clerk of the City of Fontana

_________________________________
Mayor of the City of Fontana

ATTEST:

_________________________________
City Clerk of the City of Fontana
Southwest Industrial Park (SWIP) Specific Plan

(4) Electric Fence Development

Standards in Sections:

Sections 6.4B(4), 7.4B(4), 8.4B(4), 9.4B(4), 10.4B(4), 11.4B(4), 12.4B(4), and 14.4B(4) Definition. For the purpose of this section, an electric fence is defined as any bare wire or conductor which is supported on insulators and is located outdoors within eight feet of the ground or a walking surface and is attached to a post, fence, wall, or structure, and which is capable of being energized from any electrical source, including batteries, unless such bare wire or conductor is guarded against accidental contact by forms of enclosures approved by the current edition of the National Electrical Code. Not included in this definition of electric fence are wires or conductors utilized for railway signaling and communication installations, installations under exclusive control of electric utilities, communication equipment under exclusive control of communication utilities and bare conductors which are specifically permitted in the current edition of the National Electrical Code.

An electrical security fence may be permitted at the discretion of the Community Development Director or designee through the Director’s Determination review process subject to all of the following:

1. Location:
   a. Project site is located within the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, or Jurupa South District, and; complies with all regulations and development standards within the Southwest Industrial Park Specific Plan.

   b. Project site is not located within the Public Facilities (PF) District of the Southwest Industrial Park Specific Plan.

   c. An electric fence may be installed on properties that do not touch, join at the edge or border, or share a common property line with an existing residential land use or a residential zoning district.

   c. **Adjacent to Residential.** An electric fence may be installed on properties that touch, join at the edge or border, or share a common property line with an
existing non-conforming residential land use as long as the electric fence is installed behind an approved solid block wall with a minimum height of six (6) feet.

d. Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screening shall be approved by the Director of Community Development.

e. Electric fences shall be monitored subject to Chapter 22, Article IV (Burglary, Robbery, and Panic Alarms: Verified Burglary and Fraudulent Verified Burglary Alarms) of the Fontana Municipal Code.

1. Setbacks.
   a. Electric fences shall be installed behind an approved perimeter wall with a minimum height of six (6) feet.

   b. **No electric fence may be permitted within the front yard setback or street yard setback.**

   c. The electrical security fence proposed adjacent to a sidewalk must be installed behind the side yard and front yard setback and a solid decorative masonry wall.

   d. **Installed adjacent to Previously Approved Chain Link Fencing.** Electric fences installed adjacent to previously approved chain link fence shall be located behind the chain link fence and the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen.

   e. **Behind Front and Side Yard Setbacks.** An electric fence proposed behind the front and/or side yard setback shall be located behind an approved wall or fence. If the electric fence is placed adjacent to an approved chain link fence, the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a
2. Height. Electric fences shall have a maximum height of ten (10) feet.

   a. Separation. Horizontal separation between the perimeter fence and the electrical security fence shall comply with the IEC standards.

4. Project Site. Electric fencing on project sites less than one (1) acre requires approval of a Minor Use Permit (MUP).

4. Perimeter Fence or Wall. The electrical security fence is not permitted as a perimeter fence or wall.

5. Warning Signs.
   a. Electric fences shall be clearly identified with warning signs of a maximum of nine (9) square feet, prepared in English and Spanish that read: "Warning - Electric Fence" at intervals of not less than 60 feet.
   b. Warning signs shall be black typewritten text with a yellow or white background.
   c. Warning signs shall not advertise or provide contact information of the electric fence manufacturer.

   a. An emergency Knox Box or any other similarly approved device (e.g. Rapid Emergency Access Control Transmitter (REACT) System) must be installed at every gate providing access to a property secured by an electric fence to allow fire department, police department, and/or any other emergency responder access.
   b. In the event that emergency access by emergency responders (i.e. Police Department, Fire Department, etc.) to a property where a permitted electric fence has
been installed and is operating, is required due to an emergency or urgent circumstances, and the Knox Box or other similarly approved device is absent or non-functional, and an owner, manager, employee, custodian or any other person with control over the property is not present to disable the electric fence, emergency responding personnel shall be authorized to disable the electric fence in order to gain access to the property. As a condition of permit issuance, all applicants issued permits to install or use an electric fence as provided herein shall be deemed to have agreed to waive any and all claims for damages to the electric fence against emergency responding units and/or personnel under such circumstances.

7. Electrification: The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery is charged primarily by a solar panel. However the solar panel may be augmented by a commercial trickle charger.

8. Indemnification. By accepting the permit, the applicant/property owner shall be deemed to have agreed to defend, indemnify, and hold harmless the City of Fontana or its agents, officers, and employees from any claim, action or proceeding against the City of Fontana, or its agents, officers, or employees resulting from or connected with the approval of the permit, including any subsequent installation or operation of an electrical security fence. The City of Fontana shall promptly notify the applicant/property owner of any claim, action, or proceeding and the City of Fontana shall cooperate fully in the defense. If the City of Fontana fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City of Fontana.

9. Insurance. Prior to the approval of any request to install an electrical security fence within the City of Fontana, the applicant/property owner shall provide to the City a certificate of commercial general liability insurance covering third party liability risks in a minimum amount of $1 million combined single limit per occurrence for bodily injury, personal injury, and property damage insurance with the City named as an additional insured party. The applicant/property owner shall
thereafter maintain such policy in effect at all times that the electrical fence is installed.

10. Landscaping. Addition of the electrical security fence shall in no way preclude the installation and maintenance of required landscaping.

   a. All electric fenced areas shall be kept free of weeds and other debris that may constitute a fire hazard.

   b. Any contractor/installer of an electric fence found in violation of this section of SWIP may be subject to a misdemeanor as described in Section 12 below.

11. Violation; Misdemeanor. It shall be unlawful, and a misdemeanor for any person to install, maintain or operate an electric fence in violation of these development standards.

12. Plan Check Approval. The following requests for an electric security fence shall be approved through the plan check process under the following circumstances:

   a. Adjacent to Residential. An electric fence may be installed on properties that touch, join at the edge or border, or share a common property line with an existing non-conforming residential land use as long as the electric fence is installed behind an approved solid block wall with a minimum height of six (6) feet.

   b. Installed on Previously Approved Chain Link Fencing. Electric fences installed adjacent to previously approved chain link fence shall be located behind the chain link fence and the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and screen.

   c. Behind Front and Side Yard Setbacks. An electric fence proposed behind the front and/or side yard setback shall be located behind an approved wall or fence. If the electric fence is placed adjacent to an approved chain link fence the chain link fence must be covered with an approved durable, wind resistant mesh or other material that acts as a barrier and
screen. On corner lots, the electric fence shall be angled inward to the property.

13. Director Determination. An electric fence may be permitted at the discretion of the Community Development Director or designee through the Director’s Determination review process under the following circumstance:

a. Along Major and Primary Highways/Freeways. Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screen shall be approved by the Director of Community Development and may utilize an approved durable, wind resistant mesh or other material that acts as a barrier and a screen.
16-12. - Electric fences.

(a) **Prohibited.** It shall be unlawful for any person to construct, cause to be constructed or maintain an electric fence within the city.

(b) **Definition.** For the purpose of this section, an electric fence is defined as any bare wire or conductor which is supported on insulators and is located outdoors within eight feet of the ground or a walking surface and is attached to a post, fence, wall, tree or structure, and which is capable of being energized from any electrical source, including batteries, unless such bare wire or conductor is guarded against accidental contact by forms of enclosures approved by the current edition of the National Electrical Code. Not included in this definition of electric fence are wires or conductors utilized for railway signaling and communication installations, installations under exclusive control of electric utilities, communication equipment under exclusive control of communication utilities and bare conductors which are specifically permitted in the current edition of the National Electrical Code.

(c) A violation of this section is a misdemeanor.
ORDINANCE NO. 1686

AN ORDINANCE OF THE CITY OF FONTANA, TO ALLOW ELECTRIC FENCING WITHIN THE LIGHT INDUSTRIAL (M-1) AND GENERAL INDUSTRIAL (M-2) ZONING DISTRICTS (ZCA NO. 13-003) AS DEPICTED ON THE MOST RECENTLY ADOPTED ZONING DISTRICT MAP SUBJECT TO THE ELECTRIC FENCING DEVELOPMENT STANDARDS OUTLINED IN EXHIBIT A.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. ZCA No. 13-003 is consistent with the goals and policies of the General Plan.

Section 2. ZCA No. 13-003 is hereby approved and the Zoning and Development Code is hereby amended to include language in "Exhibit A" attached hereto.

Section 3. Any provision of this Ordinance which is declared by a court of competent jurisdiction to be void, invalid or unlawful may be stricken from this Ordinance and the remainder of this Ordinance enforced in accordance with its terms. The Council declares that it would have adopted this Ordinance, such severance notwithstanding.

Section 4. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a local newspaper of general circulation, published and circulated in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED by the City Council of the City of Fontana, California, at a regular meeting held on the 11th day of February, 2014.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney
Ordinance No. 1686

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council of the City of Fontana, do hereby certify that the foregoing Ordinance is the actual Ordinance introduced by the City Council at a regular meeting on the 28th day of January, 2014, and finally passed and adopted not less than five (5) days thereafter on the 11th day of February 2014, by the following vote to-wit:

AYES: Mayor Warren, Mayor Pro Tem Roberts and Council Members Tahan, Wibert and Sandoval  
NOES:  
ABSENT:  
ABSTAIN:

______________________________
City Clerk of the City of Fontana

______________________________
Mayor of the City of Fontana

ATTEST:

______________________________
City Clerk of the City of Fontana
Sec. 30-256. - Fences and walls.

(a) **Heights.** Fences, walls and hedges may not exceed eight feet in height when located in a required side or rear yard, and may not exceed three and one-half feet in height when located in any required setback adjacent to a street. In the latter case, however, a fence with a maximum height of eight feet as measured from the sidewalk elevation may be permitted where required for security purposes. Such fencing shall not create a sight distance problem for motorist's outdoor storage areas or loading areas may be extended to eight feet in height from highest finished grade if necessary to shield such areas from public view.

(b) **Temporary fencing.**

1) **Vacant land.** An open mesh type fence limited to eight feet in height may be located around the perimeter of a vacant parcel of land (at property line) until such time as the subject parcel is developed.

2) **Abandoned buildings.** An open mesh type fence limited to eight feet in height may be located around a parcel of land (at property line) that contains an abandoned building(s) until such time as the subject parcel is developed.

(c) **Fences and walls-General.**

1) Neither wood nor chain link fencing shall be allowed in any yard adjacent to a public right-of-way.

2) Fences and walls shall be compatible in terms of design and materials with the main structures on the site.

3) Approved security fencing located within a required setback adjacent to a street shall be of wrought iron construction, with 18-inch maximum width pilasters a minimum of eight feet on center. Any such fencing shall be complimented by landscaping inclusive of trees and shrubs to provide an aesthetically pleasing and safe environment for businesses within the industrial area.

4) Any fences or walls adjacent to a public right-of-way and any additional fences or walls determined necessary by the Fontana Police Department shall be coated with an anti-graffiti coating that is approved by the Fontana Police Department. Where possible, vines shall be planted to encourage growth on the wall in an effort to discourage graffiti.

5) Barbed wire fencing shall not be used within the M-1 Zoning District.

(d) **Electric Fencing.**

Definition. For the purpose of this section, an electric fence is defined as any bare wire or conductor which is supported on insulators and is located outdoors within eight ten feet of the ground or a walking surface and is attached to a post, fence, wall, or structure, and which is capable of being energized from any electrical source, including batteries, unless such bare wire or conductor is
guarded against accidental contact by forms of enclosures approved by the current edition of the National Electrical Code. Not included in this definition of electric fence are wires or conductors utilized for railway signaling and communication installations, installations under exclusive control of electric utilities, communication equipment under exclusive control of communication utilities and bare conductors which are specifically permitted in the current edition of the National Electrical Code.

(1) An electrical security fence will be permitted at the discretion of the Community Development Director or his designee through the Director's Determination review process subject to all of the following:

a. Location:
   i. Project site is zoned light industrial (M-1) or heavy industrial (M-2), and adhere to all regulations and development standards within the City of Fontana Zoning and Development Code (Chapter 30).
   ii. Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screening shall be approved by the Director of Community Development.
   iii. Electric fences shall be monitored subject to Chapter 22, Article IV (Burglary, Robbery, and Panic Alarms: Verified Burglary and Fraudulent Verified Burglary Alarms) of the Fontana Municipal Code.
   iv. An electric fence may be installed on properties that do not touch, join at the edge or border, or share a common property line with an existing residential land use or a residential zoning district.
   v. Electric fences shall be installed behind an approved perimeter wall/fence with a minimum height of six (6) feet.
   vi. Electric fencing is prohibited for commercially zoned properties (i.e. C-1, C-2, RMU) within the City of Fontana.
   vii. Electric security fence is not permitted within the front setback or street side yard setback.
   viii. The electrical security fence proposed adjacent to a sidewalk must be installed behind the side yard and front yard setback and a solid masonry wall.

b. Height. Electric fences shall have a maximum height of ten (10) feet.


d. Project Site. Electric fencing on project sites less than one (1) acre requires approval of a Minor Use Permit (MUP).

e. Perimeter Fence or Wall. The electrical security fence is not permitted as a perimeter fence or wall.
f. Warning Signs.
   i. Electric fences shall be clearly identified with warning signs of a maximum of nine (9) square feet, prepared in English and Spanish that read: "Warning - Electric Fence" at intervals of not less than 60 feet.
   ii. Warning signs shall be black typewritten text with a yellow or white background.
   iii. Warning signs shall not advertise or provide contact information of the electric fence manufacturer.

g. Separation. Horizontal separation between the perimeter fence and the electrical security fence shall comply with the IEC standards.

h. Emergency Access.
   i. An emergency Knox Box or any other similarly approved device (e.g. Rapid Emergency Access Control Transmitter (REACT) System) must be installed at every gate providing access to a property secured by an electric fence to allow fire department, police department, and/or any other emergency responder access.
   ii. In the event that emergency access by emergency responders (i.e. Police Department, Fire Department, etc.) to a property where a permitted electric fence has been installed and is operating, is required due to an emergency or urgent circumstances, and the Knox Box or other similarly approved device is absent or non-functional, and an owner, manager, employee, custodian or any other person with control over the property is not present to disable the electric fence, emergency responding personnel shall be authorized to disable the electric fence in order to gain access to the property. As a condition of permit issuance, all applicants issued permits to install or use an electric fence as provided herein agree to waive any and all claims for damages to the electric fence against emergency responding units and/or personnel under such circumstances.

i. Electrification: The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery is charged primarily by a solar panel. However the solar panel may be augmented by a commercial trickle charger.

j. Indemnification. The applicant/property owner agrees to defend, indemnify, and hold harmless the City of Fontana or its agents, officers, and employees from any claim, action or proceeding against the City of Fontana, or its agents, officers, or employees resulting from the approval and installation of an electrical security fence. The City of Fontana shall promptly notify the applicant/property owner of any claim, action, or proceeding and the City of Fontana shall cooperate fully in the defense. If the City of Fontana fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City of Fontana.

k. Insurance. Prior to the approval of any request to install an electrical security fence within the City of Fontana, the applicant/property owner shall provide to the City a certificate of commercial general liability insurance covering third party liability risks in a minimum amount of $1 million combined single limit per
occurrence for bodily injury, personal injury, and property damage insurance with the City named as an additional insured party.

I. Landscaping. Addition of the electrical security fence shall in no way preclude the installation and maintenance of required landscaping.

m. Violation; Misdemeanor. It shall be unlawful, and a misdemeanor for any person to install, maintain or operate an electric fence in violation of these development standards.
TO: HERALD NEWS
EMAIL: LEGALS@FONTANAHERALDNEWS.COM
FROM: FONTANA CITY CLERK'S DEPARTMENT
DATE: January 29, 2014

PUBLICATION OF SUMMARY OF PROPOSED ORDINANCE NO. 1684, 1685 and 1686

PUBLISH ONE TIME ONLY ON OR BEFORE February 7, 2014. ONE AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF PROPOSED ORDINANCES NOS. 1684, 1685 and 1686.

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on January 28, 2014 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, considered adoption of the following ordinances pertaining to Zone Code Amendment (ZCA) No. 13-003 and Specific Plan Amendment (SPA) No. 13-001 (Electric Fence Ordinance):

Ordinance No. 1684, to allow electric fencing within the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, and Jurupa South land use districts of the SWIP Specific Plan (SPA No. 13-001) subject to the electric fence development standards and that the reading of the title constitutes the first reading thereof;

Ordinance No. 1685, to allow electric fencing within the General Industrial (M-2) zoning district within the Fontana Gateway Specific Plan (SPA No. 13-001) subject to the electric fence development standards and that the reading of the title constitutes the first reading thereof;

Ordinance No. 1686, to allow electric fencing within the Light Industrial (M-1) and General Industrial (M-2) zoning districts (ZCA No. 13-003) as depicted on the most recently adopted Zoning District Map subject to the electric fencing development standards and that the reading of the title constitutes the first reading thereof;

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor

Tonia Lewis
City Clerk

P.O. #800496
PUBLICATION OF SUMMARY OF ADOPTED ORDINANCES NOs. 1684, 1685 and 1686

PUBLISH ONE TIME ONLY ON OR BEFORE February 21, 2014. ONE AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF ADOPTED ORDINANCES NOs. 1684, 1685 and 1686.

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on February 11, 2014 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, adopted the following ordinances pertaining to Zone Code Amendment (ZCA) No. 13-003 and Specific Plan Amendment (SPA) No. 13-001 (Electric Fence Ordinance):

**Ordinance No. 1684**, to allow electric fencing within the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, and Jurupa South land use districts of the SWIP Specific Plan (SPA No. 13-001) subject to the electric fence development standards.

**Ordinance No. 1685**, to allow electric fencing within the General Industrial (M-2) zoning district within the Fontana Gateway Specific Plan (SPA No. 13-001) subject to the electric fence development standards.

**Ordinance No. 1686**, to allow electric fencing within the Light Industrial (M-1) and General Industrial (M-2) zoning districts (ZCA No. 13-003) as depicted on the most recently adopted Zoning District Map subject to the electric fencing development standards.

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor

Tonia Lewis
City Clerk

cf
P.O. #800496
ORDINANCE NO. 1684

AN ORDINANCE OF THE CITY OF FONTANA APPROVING SPECIFIC PLAN AMENDMENT (SPA) NO. 13-001, TO ALLOW ELECTRIC FENCING WITHIN THE SPEEDWAY INDUSTRIAL, FREEWAY INDUSTRIAL, SLOVER WEST, SLOVER EAST, SLOVER CENTRAL, JURUPA NORTH, AND JURUPA SOUTH LAND USE DISTRICTS OF THE SOUTHWEST INDUSTRIAL PARK (SWIP) SPECIFIC PLAN (SPA NO. 13-001) SUBJECT TO THE ELECTRIC FENCE DEVELOPMENT STANDARDS OUTLINED IN EXHIBIT A.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. SPA No. 13-001 is consistent with the goals and policies of the General Plan.

Section 2. SPA No. 13-001 is hereby approved and the SWIP Specific Plan is hereby amended to include language in "Exhibit A" attached hereto.

Section 3. Any provision of this Ordinance which is declared by a court of competent jurisdiction to be void, invalid or unlawful may be stricken from this Ordinance and the remainder of this Ordinance enforced in accordance with its terms. The Council declares that it would have adopted this Ordinance, such severance notwithstanding.

Section 4. This Ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a local newspaper of general circulation, published and circulated in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED by the City Council of the City of Fontana, California, at a regular meeting held on the 11th day of February, 2014.

READ AND APPROVED AS TO LEGAL FORM:

[Signature]
City Attorney
Ordinance No. 1684

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council of the City of Fontana, do hereby certify that the foregoing Ordinance is the actual Ordinance introduced by the City Council at a regular meeting on the 28th day of January, 2014, and finally passed and adopted not less than five (5) days thereafter on the 11th day of February, 2014 by the following vote to-wit:

AYES: Mayor Warren, Mayor Pro Tem Roberts and Council Members Tahan, Wibert and Sandoval

NOES:

ABSENT:

ABSTAIN

__________________________
City Clerk of the City of Fontana

__________________________
Mayor of the City of Fontana

ATTEST:

__________________________
City Clerk of the City of Fontana
Ordinance No. 1684

Southwest Industrial Park (SWIP) Specific Plan

Electric Fence Development Standards

Sections 6.4B(4), 7.4B(4), 8.4B(4), 9.4B(4), 10.4B(4), 11.4B(4), 12.4B(4), and 14.4B(4)

Definition. For the purpose of this section, an electric fence is defined as any bare wire or conductor which is supported on insulators and is located outdoors within eight ten feet of the ground or a walking surface and is attached to a post, fence, wall, or structure, and which is capable of being energized from any electrical source, including batteries, unless such bare wire or conductor is guarded against accidental contact by forms of enclosures approved by the current edition of the National Electrical Code. Not included in this definition of electric fence are wires or conductors utilized for railway signaling and communication installations, installations under exclusive control of electric utilities, communication equipment under exclusive control of communication utilities and bare conductors which are specifically permitted in the current edition of the National Electrical Code.

An electrical security fence may be permitted at the discretion of the Community Development Director or designee through the Director’s Determination review process subject to all of the following:

1. Location:
   a. Project site is located within the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, or Jurupa South District, and; complies with all regulations and development standards within the Southwest Industrial Park Specific Plan.
   b. Project site is not located within the Public Facilities (PF) District of the Southwest Industrial Park Specific Plan.
   c. An electric fence may be installed on properties that do not touch, join at the edge or border, or share a common property line with an existing residential land use or a residential zoning district.
   d. Electric fences shall be minimized from public view for properties located along major and primary highways as indicated on the most recently adopted Circulation Master Plan and for properties with freeway frontage. A method of visual screening shall be approved by the Director of Community Development.
   e. Electric fences shall be monitored subject to Chapter 22, Article IV (Burglary, Robbery, and Panic Alarms: Verified Burglary and Fraudulent Verified Burglary Alarms) of the Fontana Municipal Code.
   f. Electric fences shall be installed behind an approved perimeter wall fence with a minimum height of six (6) feet.
   g. Electric security fence is not permitted within the front setback or street side yard setback.
   h. The electrical security fence proposed adjacent to a sidewalk must be installed behind the side yard and front yard setback and a solid decorative masonry wall.

2. Height. Electric fences shall have a maximum height of ten (10) feet.

3. Performance Standards. Electric fencing shall meet the performance
4. Project Site. Electric fencing on project sites less than one (1) acre requires approval of a Minor Use Permit (MUP).

5. Perimeter Fence or Wall. The electrical security fence is not permitted as a perimeter fence or wall.

6. Warning Signs.
   a. Electric fences shall be clearly identified with warning signs of a maximum of nine (9) square feet, prepared in English and Spanish that read: "Warning - Electric Fence" at intervals of not less than 60 feet.
   b. Warning signs shall be black typewritten text with a yellow or white background.
   c. Warning signs shall not advertise or provide contact information of the electric fence manufacturer.

7. Separation. Horizontal separation between the perimeter fence and the electrical security fence shall comply with IEC standards.

     a. An emergency Knox Box or any other similarly approved device (e.g. Rapid Emergency Access Control Transmitter (REACT) System) must be installed at every gate providing access to a property secured by an electric fence to allow fire department, police department, and/or any other emergency responder access.
     b. In the event that emergency access by emergency responders (i.e. Police Department, Fire Department, etc.) to a property where a permitted electric fence has been installed and is operating, is required due to an emergency or urgent circumstances, and the Knox Box or other similarly approved device is absent or non-functional, and an owner, manager, employee, custodian or any other person with control over the property is not present to disable the electric fence, emergency responding personnel shall be authorized to disable the electric fence in order to gain access to the property. As a condition of permit issuance, all applicants issued permits to install or use an electric fence as provided herein shall be deemed to have agreed to waive any and all claims for damages to the electric fence against emergency responding units and/or personnel under such circumstances.

8. Electrification: The energizer for electric fences must be driven by a commercial storage battery not to exceed 12 volts DC. The storage battery is charged primarily by a solar panel. However the solar panel may be augmented by a commercial trickle charger.

9. Indemnification. By accepting the permit, the applicant/property owner shall be deemed to have agreed to defend, indemnify, and hold
harmless the City of Fontana or its agents, officers, and employees from any claim, action or proceeding against the City of Fontana, or its agents, officers, or employees resulting from or connected with the approval of the permit, including any subsequent installation or operation of an electrical security fence. The City of Fontana shall promptly notify the applicant/property owner of any claim, action, or proceeding and the City of Fontana shall cooperate fully in the defense. If the City of Fontana fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City of Fontana.

10. Insurance. Prior to the approval of any request to install an electrical security fence within the City of Fontana, the applicant/property owner shall provide to the City a certificate of commercial general liability insurance covering third party liability risks in a minimum amount of $1 million combined single limit per occurrence for bodily injury, personal injury, and property damage insurance with the City named as an additional insured party. The applicant/property owner shall thereafter maintain such policy in effect at all times that the electrical fence is installed.

11. Landscaping. Addition of the electrical security fence shall in no way preclude the installation and maintenance of required landscaping.

12. Violation; Misdemeanor. It shall be unlawful, and a misdemeanor for any person to install, maintain or operate an electric fence in violation of these development standards.
TO: HERALD NEWS

EMAIL: LEGALS@FONTANAHERALDNEWS.COM

FROM: FONTANA CITY CLERK'S DEPARTMENT

DATE: January 29, 2014

PUBLICATION OF SUMMARY OF PROPOSED ORDINANCE NO. 1684, 1685 and 1686

PUBLISH ONE TIME ONLY ON OR BEFORE February 7, 2014. ONE AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF PROPOSED ORDINANCES NOS. 1684, 1685 and 1686.

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on January 28, 2014 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, considered adoption of the following ordinances pertaining to Zone Code Amendment (ZCA) No. 13-003 and Specific Plan Amendment (SPA) No. 13-001 (Electric Fence Ordinance):

Ordinance No. 1684, to allow electric fencing within the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, and Jurupa South land use districts of the SWIP Specific Plan (SPA No. 13-001) subject to the electric fence development standards and that the reading of the title constitutes the first reading thereof;

Ordinance No. 1685, to allow electric fencing within the General Industrial (M-2) zoning district within the Fontana Gateway Specific Plan (SPA No. 13-001) subject to the electric fence development standards and that the reading of the title constitutes the first reading thereof;

Ordinance No. 1686, to allow electric fencing within the Light Industrial (M-1) and General Industrial (M-2) zoning districts (ZCA No. 13-003) as depicted on the most recently adopted Zoning District Map subject to the electric fencing development standards and that the reading of the title constitutes the first reading thereof;

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor
Tonia Lewis
City Clerk

P.O. #800496
TO: HERALD NEWS
EMAIL: LEGALS@FONTANAHERALDNEWS.COM
FROM: FONTANA CITY CLERK'S DEPARTMENT
DATE: February 12, 2014

PUBLICATION OF SUMMARY OF ADOPTED ORDINANCES NOs. 1684, 1685 and 1686

PUBLISH ONE TIME ONLY ON OR BEFORE February 21, 2014. ONE AFFIDAVIT PUBLICATION REQUESTED.

SUMMARY OF ADOPTED ORDINANCES NOs. 1684, 1685 and 1686.

NOTICE IS HEREBY GIVEN that the City Council of the City of Fontana, at a Regular Meeting held on February 11, 2014 in the City Council Chambers, 8353 Sierra Avenue, Fontana, California, adopted the following ordinances pertaining to Zone Code Amendment (ZCA) No. 13-003 and Specific Plan Amendment (SPA) No. 13-001 (Electric Fence Ordinance):

Ordinance No. 1684, to allow electric fencing within the Speedway Industrial, Freeway Industrial, Slover West, Slover East, Slover Central, Jurupa North, and Jurupa South land use districts of the SWIP Specific Plan (SPA No. 13-001) subject to the electric fence development standards.

Ordinance No. 1685, to allow electric fencing within the General Industrial (M-2) zoning district within the Fontana Gateway Specific Plan (SPA No. 13-001) subject to the electric fence development standards.

Ordinance No. 1686, to allow electric fencing within the Light Industrial (M-1) and General Industrial (M-2) zoning districts (ZCA No. 13-003) as depicted on the most recently adopted Zoning District Map subject to the electric fencing development standards.

A certified copy of the full text of the ordinance is available in the office of the City Clerk of the City of Fontana, 8353 Sierra Avenue, Fontana, California 92335.

CITY COUNCIL OF THE CITY OF FONTANA
Acquanetta Warren, Mayor
Tonia Lewis
City Clerk

cf P.O. #800496
1. Name or description of project: ZCA No. 16-004 and SPA No. 15-003

2. Location: Request for approval of electric fencing within the flowing areas of the City of Fontana: all industrial land use districts within the Southwest Industrial Park (SWIP) Specific Plan (except for the Residential Trucking District (RTD) which is considered a residentially zoned district); and the General Commercial (C-2), Light Industrial (M-1) and General Industrial (M-2) zoning districts as depicted on the most recently adopted Zoning District Map (ZCA No. 16-004).

3. Person undertaking project: Michael Pate from Electric Guard Dog LLC,

4. Staff Determination: The City's Staff, having undertaken and completed a preliminary review of this project in accordance with the California Environmental Quality Act (CEQA) has concluded that this project does not require further environmental assessment because:

   a. ____ The proposed action does not constitute a project under CEQA.
   b. ____ The project is a Ministerial Project.
   c. ____ The project is an Emergency Project.
   d. ____ The project constitutes a feasibility or planning study.
   e. X The project is categorically exempt pursuant to CEQA.

Applicable Exempt: Section 15061(b) (Review of Exemption) of the California Environmental Quality Act.

   f. ____ The project is statutorily exempt.
      Applicable Exemption: ________________
   g. ____ The project is otherwise exempt on the following basis: There is no possibility that the activity may have a significant effect on the environment.
   h. ____ The project involves another public agency which constitutes the Lead Agency. Name of Lead Agency: ________________

__________________________________________
Date: __________________________

Zai AbuBakar
Director of Community Development
NOTICE OF EXEMPTION

PTO: Clerk of the Board of Supervisors  FROM: City of Fontana
County of San Bernardino  Planning Division
385 N. Arrowhead Avenue, 2nd Floor  8353 Sierra Avenue
San Bernardino, CA  92415-0130  Fontana, CA 92335
Project Title: Zone Change Amendment (ZCA) No. 16-004
Specific Plan Amendment No. (SPA) No. 15-003

1. Project Location - Specific: Request for approval of electric fencing within the flowing areas of
the City of Fontana: all industrial land use districts within the Southwest Industrial Park
(SWIP) Specific Plan (except for the Residential Trucking District (RTD) which is
considered a residentially zoned district); and the General Commercial (C-2), Light
Industrial (M-1) and General Industrial (M-2) zoning districts as depicted on the most
recently adopted Zoning District Map (ZCA No. 16-004).

2. (a) Project Location - City: Fontana, CA 92335
(b) Project Location - County: San Bernardino

4. Description of nature, purpose, and beneficiaries of Project: Review and approve amendments
to the electric fence text in the Municipal Code and SWIP Specific Plan.

5. Name of Public Agency approving project: City of Fontana

6. Name of Person or Agency carrying out project: City of Fontana

7. Exempt status: (Check one)
   (a) _____ Ministerial project.
   (b) _____ Not a project.
   (c) _____ Emergency Project.
   (d) __ X __ Categorical Exemption. State type and class number: Exempt under Section No.
        15061(b), (Review of Exemption) of the California Environmental Quality Act.
   (e) _____ Declared Emergency.
   (f) _____ Statutory Exemption. State Code section number: _______________________
   (g) _____ Other. Explanation: __________________________ __________________________

8. Reason why project was exempt: The site meets existing facility requirements.

9. Contact Person: Paul Gonzales, Senior Planner Telephone: (909) 350-6658

10. Attach Preliminary Exemption Assessment (Form "A") before filing.

Date Received for Filing: _________________________ _________

Zai AbuBakar
Director of Community Development

(Clerk Stamp Here)

Attachment No. 10
NOTICE OF PUBLIC HEARING

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE CITY COUNCIL OF THE CITY OF FONTANA FOR DISCUSSION FOR THE FOLLOWING:

Specific Plan Amendment (SPA) No. 15-003
Zoning Code Amendment (ZCA) No. 16-004

Electric Guard Dog Fence, a battery operated security fence company proposes to amend the following specific plan and the City of Fontana Zoning and Development Code (Chapter 30):

SPA No. 15-003: Amend the existing electric fencing standards in all land use districts of the Southwest Industrial Park Specific Plan.

ZCA No. 16-004: Amend the existing electric fencing standards in the Light Industrial (M-1) and General Industrial (M-2) zoning districts; and allow electric fencing within the General Commercial (C-2) zoning district:

Environmental Determination:

The Community Development Department staff has reviewed the proposed project and made the following environmental determination: The project is Categorically Exempt, pursuant to Section 15061(b) (Review of Exemption) of the California Environmental Quality Act.

Property Location:
Southwest Industrial Park Specific Plan
Light Industrial (M-1) Zoning District
General Industrial (M-2) Zoning District
General Commercial (C-2) Zoning District

Date of Hearing: September 12, 2017

Place of Hearing: City Hall Council Chambers
8353 Sierra Avenue
Fontana, CA 92335

Time of Hearing: 7:00 P.M.

Should you have any questions concerning this project, please contact Paul Gonzales, Senior Planner, at (909) 350-6658 or at pgonzales@fontana.org.

ANY INTERESTED PARTY MAY APPEAR AND PRESENT ANY INFORMATION WHICH MAY BE OF ASSISTANCE TO THE CITY COUNCIL. A COPY OF THE APPLICATION AND ENVIRONMENTAL DOCUMENTATION IS AVAILABLE FOR INSPECTION IN THE PLANNING DIVISION, CITY HALL.

IF YOU CHALLENGE IN COURT ANY ACTION TAKEN CONCERNING A PUBLIC HEARING ITEM, 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 TO THE CITY AT, OR PRIOR TO, THE PUBLIC HEARING.

Publish Date: September 1st, 2017

Attachment No. 11
June 9, 2017

City of Fontana  
8353 Sierra Avenue  
Fontana CA 92335

Meeting: City Council  
Meeting Date: June 13, 2017  
Item: PH - A  
(Electric Fences)

Honorable Mayor and Members of the Council:

We are in receipt of the proposed ordinance dated June 6, 2017 by planning director Zai AbuBakar relative to amending the city's code and development standards for the installation of electrified security fences in the City of Fontana.

The Electric Guard Dog has reviewed this latest version of the ordinance in its entirety and it appears that none of the concerns previously articulated in 2016 and this year by us, as the applicant, as well as the customers whose businesses are located in your City are addressed.

We find it no coincidence that this version of the ordinance which will be discussed at Tuesday, June 13th council meeting was the result of several closed door internal discussions by city staff led by Ms. AbuBakar and Mr. Paul Gonzalez which did not include us as the applicant or any of the impacted businesses.

These actions taken by Ms. AbuBakar and Mr. Gonzalez were in clear contravention to the official direction provided by Mayor Warren and adopted by the City Council on February 28, 2017.

To confirm our accounting of the matter, we reviewed the video tape transcript of the February 28, 2017 meeting (http://fontanaca.swagiti.com/play/03012017-546) where establishment of a subcommittee was discussed. The sum and substance of the councils' discussion at this meeting was the following:

1. A subcommittee shall be assembled  
2. This subcommittee shall include the applicant  
3. The purpose of the committee is to meet and come to an agreement on how to best identify a workable solution for all parties  
4. That two impacted businesses shall be invited to be part of the discussion by the subcommittee

The Council goes onto say that the process needs to be inclusive and points out that there are businesses that are impacted and are entitled to protect their property.

None of the above-mentioned tasks as directed by the council was performed.
Neither the Electric Guard Dog nor our customers were either invited or notified of any meetings which apparently were held March 29, 2017 and April 20, 2017.

These meetings conducted in this manner were a clear violation of the City Council’s February 28th and March 14th direction.

Furthermore, because we were excluded, the resulting ordinance is even more stringent than the earlier versions all of which is to say that there was no meeting of the minds, no mutual agreement and no workable solution identified which was the council’s mission.

Based on the foregoing, the Electric Guard Dog and all of our customers respectively request that this council send this entire matter back to the subcommittee and provide us notice and opportunity to be heard and have our concerns vetted by this committee as directed and promised by the City Council.

We believe that this request is not only reasonable but fair.

Sincerely,

Michael Pate
Compliance Director
Electric Guard Dog, LLC

John Lee
Compliance Director
Electric Guard Dog, LLC
RECOMMENDATION:

That the Mayor and City Council have a Second Reading/ Adopt Ordinance No. 1767 of the City Council of the City of Fontana, California, adding a new Section 2-42 to Article II, Chapter 2 of the Fontana Municipal Code to change the City’s Electoral System from at-large to by-district elections with respect to electing City Council members and maintaining an elective Mayor, establishing District boundaries and scheduling elections within the Districts.

COUNCIL GOALS:

* To create a team by working together to provide stability and consistent policy direction.
* To create a team by supporting the decisions of the majority once made.

DISCUSSION:

On August 31st, 2016 the City of Fontana received a letter from an attorney (Kevin Shenkman) requesting a voluntary change to the City of Fontana’s current at-large election system. The letter alleges that the City’s current at-large voting process violates the California Voting Rights Act (CVRA). The CVRA is a state law that has been used over the past few years to cause cities and other local agencies to move to “by-district” elections. Under “by-district” elections, the city is split into multiple electoral districts. City Council members are required to live within his/her district and are elected exclusively from voters located within that district.

To facilitate the implementation of district-based elections, Governor Brown recently signed AB 2220. That legislation allows for the establishment of a district-based election system, including an elective mayor, through the adoption of an ordinance by the Fontana City Council. California Elections Code section 10010 requires a total of five public hearings before a proposal to establish district boundaries for a by-district electoral system is approved.

To begin the process for establishment of district-based elections, on February 14th the Mayor and City Council adopted a Resolution of Intention. That Resolution resolved to create four (4) election districts within the City of Fontana – and established that the Mayor will continue to be elected “at-large” – beginning with the November, 2018 election.

The City Council has also approved a tentative timeline for conducting a public process to solicit public input and testimony on proposed by-district electoral plans.
On February 28th the Mayor and City Council approved - by resolution - a set of criteria to be used to guide the establishment of election districts. The proposed election districts criteria included the following:

a) Each Council District would contain a nearly equal number of inhabitants.

b) Council District borders would be drawn in a manner that complies with the Federal Voting Rights Act.

c) Council districts would consist of contiguous territory in as compact form as possible.

d) Council districts would respect “communities of interest” as much as possible.

e) Council district borders would follow visible natural and man-made geographical and topographical features as much as possible.

f) District borders would respect the previous choices of city voters by avoiding the creation of head-to-head contests between Councilmembers previously elected by the voters of the City (insofar as this does not conflict with Federal or State Law).

g) In establishing the boundaries of the districts, the City Council would also consider geography and cohesiveness, contiguity, integrity, and compactness of territory.

The next step(s) in the process of creating election districts – as established by the California Elections Code – called for the City Council to hold two Public Hearings (completed on March 28th and April 25th). Those hearings were for the expressed purpose of soliciting public input and comments on the composition of the proposed election districts (i.e. how the public believes the districts should be drawn).

Comments received at the public hearings completed on March 28th and on April 25th, along with the criteria previously approved by the City Council, provided a guide for NDC to use in the drafting of election districts for the City of Fontana.

At the City Council Workshop on Tuesday May 9th, NDC presented the draft election district maps prepared for the City of Fontana. On Tuesday, June 13th a second City Council Workshop was conducted to review and discuss the draft election district maps. Following the Workshop on June 13th the Mayor and City Council selected three (3) election district maps - for review and comment as part of the public review process (please see attached maps). All three of the selected maps are legally compliant with the elections code and are consistent with the Council adopted criteria for drafting the election districts.
The draft election district maps selected by the Mayor and City Council were placed on the City of Fontana’s web page – for public review – on Wednesday, June 14th. In addition, at the direction of the Mayor and City Council, the Election District Maps were also placed – for public review – at the Jessie Turner Community Center, the Cypress Community Center, the Fontana Senior Community Center and at both the Heritage and Don Day Community Centers. Finally, the three proposed maps were also displayed at City Hall and in the Development Services building foyer.

State law requires that the Mayor and City Council conduct two public hearings on the proposed City Council election district maps. Those hearings are for the expressed purpose of soliciting public input and comments on the proposed election district maps. The City Council held the two required public hearings on Tuesday, June 27th and Tuesday, July 25th.

Following the Public Hearing on Tuesday, July 25th the Mayor and City Council approved proceeding with Council Election District draft map #6 - and Election Year Option #2 – for the purpose of drafting the Council Election Districts Ordinance.

At the direction of the Mayor and City Council, the Council Election Districts Ordinance was prepared. State law requires that the Mayor and City Council conduct a fifth Public Hearing (held on Tuesday, August 22nd) on the Council Election Districts Ordinance.

Ordinance No. 1767 was introduced by a vote of 3-2 at the August 22, 2017, City Council Meeting. Tonight’s meeting will be the second reading of the Council Election Districts Ordinance.

Pending tonight’s meeting and any action by the Mayor and City Council, the next step in the process will be to work with the County Registrar’s Office to implement the adopted Council Election Districts Map.

FISCAL IMPACT:
None.

MOTION:
Approve staff recommendation.

SUBMITTED BY:

APPROVED BY:
ATTACHMENTS:

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ITEM: UFB-A
ORDINANCE NO. 1767

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, ADDING A NEW SECTION 2-42 TO ARTICLE II, CHAPTER 2 OF THE FONTANA MUNICIPAL CODE TO CHANGE THE CITY’S ELECTORAL SYSTEM FROM AT-LARGE TO BY-DISTRICT ELECTIONS WITH RESPECT TO ELECTING CITY COUNCIL MEMBERS AND MAINTAINING AN ELECTIVE MAYOR, ESTABLISHING DISTRICT BOUNDARIES, SCHEDULING ELECTIONS WITHIN THE DISTRICTS, AND MAKING CERTAIN FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the City of Fontana, California (“City”) is a general law city, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City and its legislative body, the City Council, supports the full participation of all eligible and registered voters in electing Members of the City Council; and

WHEREAS, four of the members of the Fontana City Council are currently elected in at-large elections, in which each City Councilmember is elected by all registered voters of the entire City, with the Mayor being separately elected by all registered voters of the entire City, pursuant to California Government Code sections 34871 and 34900 et seq.; and

WHEREAS, on September 28, 2016, Governor Jerry Brown signed Assembly Bill 2220 (“AB 2220”), which became effective January 1, 2017, and amended California Government Code section 34886 to authorize the City Council of any city, regardless of population size, to adopt an ordinance change to a by-district system of electing City Councilmembers, including with an elective mayor, without the need to submit such an ordinance to voters for approval; and

WHEREAS, on September 28, 2016, Governor Jerry Brown also signed Assembly Bill 350 (“AB 350”), which became effective January 1, 2017, which requires a City that changes to district-based elections to hold public hearings before and after drawing a preliminary map or maps of the proposed district boundaries, and to publish and make available for release at least one draft map and the potential sequencing of elections; and

WHEREAS, on or about August 31, 2016, the City received a letter asserting that the City’s current at-large electoral system violates the California Voting Rights Act of 2001 (“CVRA”) and threatening litigation if the City declined to adopt by-district elections; and

WHEREAS, the August 31, 2016 letter does not contain sufficient evidence of a violation of the CVRA, but the cost of defending against a claim under the CVRA is extremely high, even if the City is successful, and at this time such an expensive defense would severely burden the City’s budget and curtail the City’s ability to provide needed...
services to its residents; and

WHEREAS, in order to avoid spending taxpayer dollars in the defense of a potentially extremely expensive lawsuit, the City Council has determined that it is in the best interest of the City to move from its current at-large electoral system to a by-district election for members of the City Council, with an elective mayor pursuant to California Government Code section 34886 and in furtherance of the purposes of CVRA, and to that end, the City Council has undertaken an extensive public outreach effort, including multiple workshops and public hearings, at which time the public was invited to participate and provide input as to the proposed boundaries, content and composition of the districts and the potential sequencing of elections; and

WHEREAS, under the provisions of California Election Code section 10010, a City that changes from an at-large method of election to a district-based election must do all of the following before a public hearing at which the City Council votes to approve or defeat an ordinance establishing district-based elections:

• Before drawing a draft map or maps of the proposed boundaries of the districts, the City must hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts.

• After all draft maps are drawn, the City must publish and make available for release at least one draft map and the potential sequence of the elections.

• The City must hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map(s) and the proposed sequence of elections. The first version of a draft map must be published at least seven days before consideration at a hearing; and

WHEREAS, on February 14, 2017, the City Council adopted a Resolution of Intention, outlining the City Council’s intention to transition from at-large to district-based elections, specific steps the City Council will undertake to facilitate this transition, and an estimated time frame for doing so; and

WHEREAS, on February 28, 2017, the City Council also adopted criteria to guide the establishment of electoral districts consistent with legal requirements, including reasonable equal population and section 2 of the federal Voting Rights Act, as well as other concerns and considerations important to the City; and

WHEREAS, on March 28, 2017 and April 25, 2017, the City Council conducted two (2) public hearings for the purpose of soliciting public input and comments on the composition of the proposed election districts; and

WHEREAS, the City Council also conducted a public workshop on May 9, 2017, at
WHEREAS, on June 13, 2017, the City Council conducted an additional public workshop, to review and discuss the draft election district maps, after which the City Council selected three (3) draft election district maps for public review, consideration, and input; and

WHEREAS, the three (3) draft election district maps were placed on the City’s public webpage for public review on June 14, 2017; and

WHEREAS, on June 27 and July 25, 2017, the City Council conducted two (2) additional public hearings, at which time all interested persons were afforded an opportunity to provide input regarding the content of the draft maps and the proposed sequence of elections, and at which time the City Council did hear and consider such public input regarding the content of the draft maps and the proposed sequence of elections; and

WHEREAS, on August 22, 2017, prior to the adoption of this ordinance, the City Council conducted another public hearing, at which time all interested persons were afforded an opportunity to be heard; and

WHEREAS, the purpose of this ordinance is to enact, pursuant to California Government Code section 34886, an ordinance providing for election of the Members of the City Council of the City of Fontana by-district in four (4) single-member districts as reflected in Exhibit A to this ordinance, and providing for the election of an elective Mayor of the City of Fontana to be elected City-wide; and

WHEREAS, pursuant to California Government Code section 34886, it is declared the change in the method of electing members of the City Council of the City of Fontana made by this ordinance is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code) and to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. A new Section 2-42 is hereby added to Article II, Chapter 2 of the Fontana Municipal Code with the title “City Council Electoral System” to read as follows:

“Sec. 2-42  City Council Electoral System

(a)  At-large election—Mayor. Pursuant to California Government Code section 34886, the mayor shall be voted on at-large.
(b) City Council districts established. Four City Council districts are hereby established in the City of Fontana. The boundaries and identifying number of each district shall be as described on the Council District Map attached hereto as Exhibit “A” and incorporated herein by this reference.

(c) Election of members of the City Council by district.

A. Following the effective date of the ordinance codified in this section and upon the commencement of “by district” elections in the order established in section (d) of this section 2-42, members of the City Council shall be elected “by district” as defined in California Government Code Section 34871 or any successor statute. Except for the Mayor, a person shall not be eligible to be elected to be a member of the City Council unless he or she is otherwise qualified as required by law and resided in the district, and both resided in the geographical area making up the district from which he or she is nominated to be elected and was a registered voter of the City of Fontana at the time nomination papers are issued to the candidate as provided for in Section 10227 of the California Elections Code. It is the intent of the City Council, in enacting this ordinance, that no term of any member of the City Council that commences on or prior to the effective date of the ordinance codified in this section shall be affected prior to its expiration date.

B. Registered voters signing nomination papers or voting for a member of the City Council shall be residents of the geographical area making up the district from which the member is to be elected.

C. The terms of the office of each member elected to the City Council, including the Mayor, shall remain four years.

(d) Commencement of district elections. It is the intent of the City Council, in enacting this ordinance, that this section shall not affect any term of office in existence or commencing on or before the effective date of the ordinance codified in this section. Commencing with the general municipal election in November of 2018 and thereafter, the voters in districts One (1) and Four (4) shall elect members of the City Council by district and the Mayor shall be elected at large for full four-year terms. At the general municipal election in 2020 and thereafter, the voters in districts Two (2) and Three (3) shall elect members of the City Council by district for full four-year terms.

(e) Adjustment of boundaries.

Page 4 of 8
A. Pursuant to Elections Code Section 21601, as it may be amended, the City Council shall, by ordinance or resolution, adjust the boundaries of any or all of the districts following each decennial federal census. Using the census as a basis, the City Council shall adjust the boundaries so that the districts shall be as nearly equal in population as practicable and in compliance with all applicable provisions of law. Any adjustment of district boundaries shall be made by ordinance or resolution, adopted by the City Council before the first day of November of the year following the year in which each decennial federal census is taken. Prior to the public hearing approving the adjustment of the district boundaries, the City Council shall hold at least one public hearing on the proposed district boundaries as required by Election Code Section 21607.

B. At the time of any annexation of territory to the City, the City Council shall designate, by resolution adopted by a vote of at least a majority of the City Council, the contiguous district to which the annexed territory shall be a part and shall amend the district boundaries if necessary in accordance with Election Code Section 21603, as it may be amended.

C. Pursuant to Elections Code Section 21606, the term of office of any Council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which he or she was elected. At the first election for Council following adjustment of the boundaries of the districts, a person meeting the requirements of Government Code Section 34882 shall be elected to the City Council for each district under the readjusted district plan that has the same district number as a district whose incumbent’s term on the Council is due to expire.

(f) Implementation. If necessary to facilitate the implementation of this Ordinance, the City Clerk is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Clerk shall consult with the City Manager and City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts."

SECTION 2. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.
SECTION 3. Inconsistencies. To the extent the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof.

SECTION 4. Interpretation. In interpreting this Ordinance or resolving any ambiguity, this Ordinance shall be interpreted in a manner that effectively accomplishes its state purposes.

SECTION 5. CEQA. Pursuant to Section 15320 of the Guidelines for the Implementation of the California Environmental Quality Act (“CEQA”), further review under CEQA is not required because the City Council action in establishing district-based elections consists of a change in the organization or reorganization of a local governmental agency where the change does not change the geographical area in which previously existing powers are exercised. Therefore, the City Council finds that it can be seen with certainty that there is no possibility that this action will result in any environmental effect. The City Clerk is hereby directed to file a Notice of Exemption with the County Clerk within three (3) days following the date of this Ordinance.

SECTION 6. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana.

SECTION 7. Severability. If any section, subsection, subdivision, sentence, clause phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, then such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Fontana hereby declares it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

APPROVED AND ADOPTED this 12th day of September, 2017.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting of said City Council on the 22nd
day of August, 2017, and was passed and adopted not less than five (5) days thereafter on the 12th day of September, 2017, by the following vote to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________
City Clerk of the City of Fontana

______________________________
Mayor of the City of Fontana

ATTEST:

______________________________
City Clerk
EXHIBIT “A”

ELECTION DISTRICT MAPS
ACTION REPORT  
September 12, 2017  
FROM: Department of Engineering  
SUBJECT: Adopt an Ordinance Establishing New Speed Reduction (Speed Limit) Zones  

RECOMMENDATION:  
Waive further reading of and introduce Ordinance No. ____ , establishing new speed reduction (speed limit) zones within the City of Fontana, and that the reading of the title constitutes the first reading thereof.  

COUNCIL GOALS:  
* To invest in the city’s infrastructure (streets, sewers, parks, etc.) by focusing on relief of traffic congestion.  

DISCUSSION:  
On January 13, 2015, the City Council approved Ordinance No. 1712 and on November 24, 2015 approved Ordinance No. 1735 which jointly established the Speed Reduction (Speed Limit) Zones throughout the City. Engineering staff has re-evaluated non-statutory speed limits on segments of roadways that have undergone a significant change in roadway characteristics, such as installations of new signals and stop-signs, and/or surrounding land use changes resulting from added development. This new Speed Zone Ordinance will update 10 speed zones and re-certify the remaining for a total of 178 speed zones for consistency with roadway conditions.  

In accordance with California Vehicle Code (CVC), Sections 22357 and 22358, local municipalities have the power to increase or decrease speed limits for local thoroughfares. CVC Section 40802 requires an Engineering and Traffic Survey, as defined in CVC Section 627, be performed every five (5) years when enforcing the speed limit by radar or other electronic devices.  

An Engineering and Traffic Survey is based upon the premise that a reasonable speed limit is one that conforms to the behavior of the majority of motorists and by measuring actual speeds, a speed limit is determined that is reasonable and effective. This is known as the prevailing speed. For a speed limit to be effective, statistically eighty-five percent (85%) of the drivers must voluntarily comply with the law. Setting speed limits at appropriate levels will create a uniform flow of traffic, discourage violation of the law, and help maintain safe streets and highways. However, speed limits may often be set below prevailing speeds when other factors otherwise not readily apparent to the driver exist on the roadway. Factors that need to be considered include, but are not limited to, collision history for the roadway segment, design speed, sight distance constraints, pedestrian/bicycle safety,
direct residential access. Staff has taken these items into consideration and recommended appropriate speed limits accordingly.

Engineering and Traffic Surveys are critical for the radar enforcement of posted speed limits within the City of Fontana. Additionally, the San Bernardino County Superior Court magistrates diligently verify that there are current Engineering and Traffic Surveys on file. If a survey is over five (5) years old, the magistrate could dismiss a case without consideration of any other evidence.

FISCAL IMPACT:
Fines and forfeitures received from enforcement of speed limits provide revenue to the City’s Traffic Safety Fund. Funds for the speed zone program are budgeted in Fiscal Year 2017/2018 in Fund 243 Traffic Safety.

MOTION:
Approve staff recommendation.

SUBMITTED BY:  
Ricardo Sandoval  
Director of Engineering

REVIEWED BY: 
Debbie M. Brazill  
Deputy City Manager

APPROVED BY:  
Kenneth R. Hunt  
City Manager

ATTACHMENTS:

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ITEM: NB-A
ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA ESTABLISHING NEW SPEED REDUCTION (SPEED LIMIT) ZONES WITHIN THE CITY OF FONTANA.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

WHEREAS, in accordance with California Vehicle Code Section 40802 and the California Manual of Traffic Control Devices, Chapter 2, Section 2B.13, Engineering and Traffic Surveys must be performed before the use of radar or other electronic devices for enforcement is authorized; and

WHEREAS, since the adoption of Ordinance No. 1712 and Ordinance No. 1735, the City conducted and completed additional traffic engineering and speed surveys on segments identified in Exhibit “A” attached hereto; and

WHEREAS, the results of the engineering and speed surveys conform to the requirements of the Vehicle Code and the California Manual of Uniform Traffic Control Devices; and

WHEREAS, the City’s police officers have successfully completed a radar operator course, approved and certified by the Commission on Peace Officer Standards and Training, of not less than twenty four (24) hours on the use of police traffic radar; and

WHEREAS, a radar, laser, or other electronic device used to measure the speed of a vehicle meets the minimal operational standards of the National Highway Traffic Safety Administration, and has been calibrated within one year prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility; and

WHEREAS, the Office of City Traffic Engineer has concluded and recommends that the speed limits set forth in Exhibit “A” attached hereto are justified.

SECTION 1. The speed limits on the street segments surveyed as shown on Exhibit “A” are found to be the most appropriate to facilitate the orderly movement of traffic and are reasonable. The Office of the Traffic Engineer is hereby directed to provide notification to the public through the appropriate official traffic control devices in accordance with Municipal Code 17-63(a).

SECTION 2. This Ordinance shall take effect thirty (30) days after the date of adoption and prior to the expiration of fifteen (15) days from passage thereof shall be published by the City Clerk at least once in a local newspaper of general circulation, published and circulated in the City of Fontana, and thenceforth and thereafter the same shall be in full force and effect.
APPROVED AND ADOPTED this 12th day of September 2017.

APPROVED AS TO LEGAL FORM:

________________________
City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, California, and ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance duly and regularly adopted by the City Council at a regular meeting on the 12th day of September, 2017, by the following vote to wit:

AYES:
NOES:
ABSENT:

________________________
City Clerk of the City of Fontana

________________________
Mayor of the City of Fontana

ATTEST:

________________________
City Clerk
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### SPEED ZONES

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