

Thomas R. Hatch Interim City Manager

Gary A. Sheatz City Attorney

Pamela Coleman City Clerk

# AGENDA

# **City Council** November 09, 2021

### 5:00 PM Closed Session 6:00 PM Regular Session

City Council Chamber 300 E. Chapman Ave. Orange, CA 92866 MARK A. MURPHY Mayor

KIMBERLEE NICHOLS Mayor pro tem

> CHIP MONACO Councilmember

ARIANNA BARRIOS Councilmember, District 1

JON DUMITRU Councilmember, District 2

KATHY TAVOULARIS Councilmember, District 3

ANA GUTIERREZ Councilmember, District 5

The City of Orange City Council welcomes you to this meeting and encourages your participation. Regular City Council meetings are held on the second Tuesday of each month at 6:00 p.m.

### Agenda Information

The agenda contains a brief general description of each item to be considered. The City Council may take legislative action deemed appropriate with respect to the item and is not limited to the recommended action indicated in staff reports or the agenda. The agenda and supporting documentation is available after 4:00 p.m. on the Thursday prior to the Council meeting on the City's website at www.cityoforange.org, at the City Clerk's Office located at 300 E. Chapman Avenue, and at the Main Public Library located at 407 E. Chapman Avenue. Written materials relating to an item on the agenda that are provided to the City Council after agenda packet distribution and within 72 hours before it is to consider the item will be made available for public inspection in the City Clerk's Office during normal business hours; at the City Council meeting; and made available on the City's website.

### **Public Participation**

Regular meetings are televised live on Spectrum Cable Channel 3 and AT&T U-verse Channel 99, and streamed live and on-demand on the City's website at www.cityoforange.org.

Pursuant to Government Code Section 54954.3, members of the public may address the City Council on any agenda item before or during Council's consideration of the item, and on any other matters within the City Council's jurisdiction by using any of the following methods:

#### 1) In-Person

To speak on an item on the agenda, complete a speaker card indicating your name and address, and identifying the agenda item number or subject matter you wish to address. The card should be given to the City Clerk prior to the start of the meeting. General comments are received during the "Public Comments" section at the beginning of the Regular Session. No action may be taken on off-agenda items unless authorized by law. Public Comments are limited to three (3) minutes per speaker unless a different time limit is announced. It is requested that you state your name for the record, then proceed to address the City Council. All speakers shall observe civility, decorum, and good behavior.

(Continued on page 2)

#### 2) Written Public Comments via email or eComment

Members of the public can submit their written comments electronically for City Council consideration by emailing them to CCpubliccomment@cityoforange.org with the subject line "Public Comment Item # (insert the item number relevant to the comment)" or "Public Comment Non-agenda Item" for general public comments. The public can also submit written comments on the City's eComment page. Please visit the City's website at www.cityoforange.org, click Current City Council Agenda, then click the eComment link for this meeting. To ensure distribution to the City Council prior to consideration of the agenda, we encourage the public to submit comments by 3:00 p.m. the day of the meeting. All public comments will be provided to the Council, posted on the City's website, and compiled as part of the record.

#### 3) Public Comments via recorded voicemail message

Finally, the public can record their comments by calling (714) 744-2234 no later than 5:00 p.m. the day of the meeting. Recorded messages will not be played at the meeting, but will be provided to the Council and the caller's position will be summarized in the minutes.

In accordance with Ordinance No. 10-01, any person making personal, impertinent, slanderous or profane remarks or who becomes boisterous while addressing the Council shall be called to order by the Mayor. If such conduct continues, the Mayor may order the person barred from addressing the City Council further during that meeting, unless permission to continue is granted by a majority vote of the Council.

Please contact the City Clerk's Office at (714) 744-5500 with any questions.

ADA Requirements: In compliance with the Americans with Disabilities Act, if you need accommodations to participate in this meeting, please contact the City Clerk's office at (714) 744-5500. Notification at least 48 hours in advance of meeting will enable the City to make arrangements to assure accessibility to this meeting.

#### REMINDER: Please silence all electronic devices while City Council is in session.

### 5:00 PM CLOSED SESSION

### 1. ROLL CALL

### 2. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

At this time, members of the public may address the Council on Closed Session items only. Public Comments are limited to three (3) minutes per speaker.

### 3. RECESS TO CLOSED SESSION

### a. PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957(b) Title: City Manager

### b. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(a) & (d)(1) Name of Case: Professional Towing, LLC, dba Alberto's Towing, LLC v. The City of Orange, et al. Orange County Superior Court Case No. 30-2021-01220161

Pursuant to Government Code Section 54956.9(a) &(d)(1) Name of case: Mary's Kitchen, et al. v. City of Orange United States District Court Case No. 8:21-cv-01483-JVS-KES

### c. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2). (One case)

### 4. CLOSED SESSION REPORT

### 5. ADJOURNMENT

The City Council will adjourn to the 6:00 p.m. Regular Session in the Council Chamber.

### 6:00 PM REGULAR SESSION

### 1. OPENING/CALL TO ORDER

### 1.1 INVOCATION

Fr. Neil Edlin, St. Mary Magdalene

### 1.2 PLEDGE OF ALLEGIANCE

Mayor pro tem Kimberlee Nichols

### 1.3 ROLL CALL

### 1.4 PRESENTATIONS/ANNOUNCEMENTS

Proclamation recognizing the 50th Anniversary of 1971 14U Orange Pony World Series Champions

### 2. PUBLIC COMMENTS

At this time, members of the public may address the Council on matters not listed on the agenda within the subject matter jurisdiction of the City Council, provided that NO action may be taken on off-agenda items unless authorized by law. Public Comments are limited to three (3) minutes per speaker.

### 3. CONSENT CALENDAR

All items on the Consent Calendar are considered routine and are enacted by one motion approving the recommended action listed on the Agenda. Any member of the City Council, staff or the public may request an item be removed from the Consent Calendar for discussion or separate action. Unless otherwise specified in the request to remove an item from the Consent Calendar, all items removed shall be considered immediately following action on the remaining items on the Consent Calendar.

#### 3.1. Waive reading in full of all ordinances on the Agenda.

#### **Recommended Action:**

Approve.

Attachments: <u>Staff Report</u>

### 3.2. Confirmation of warrant registers dated October 8, 14, 22, and 28, 2021.

#### **Recommended Action:**

Approve.

Attachments: Staff Report

3.3. Approval of meeting minutes of the City Council of the City of Orange for the October 13, 2021, Adjourned Regular Meeting.

### **Recommended Action:**

Approve minutes as presented.

<u>Attachments:</u> <u>Staff Report</u> <u>October 13, 2021, Adjourned Regular Meeting minutes</u>

3.4. Agreement with the State of California Department of Alcoholic Beverage Control for the Alcoholic Beverage Control/Office of Traffic Safety Grant Program from October 1, 2021 through August 31, 2022. Resolution No. 11361.

#### Recommended Action:

- 1. Approve agreement with the State of California, Department of Alcoholic Beverage Control in the amount of \$20,000 for the Alcoholic Beverage Control/Office of Traffic Safety Grant Program and authorize the City Manager to execute on behalf of the City.
- Adopt Resolution No. 11361: A Resolution of the City Council of the City of Orange authorizing the Orange Police Department to accept a \$20,000 ABC-OTS Grant from the Department of Alcohol Beverage Control and authorizing the City Manager to execute all grant documents on behalf of the City.
- 3. Accept into the City's revenue budget a \$20,000 grant from the State of California, Department of Alcoholic Beverage Control, into revenue account number 100.4033.45495.30187, ABC-OTS 21-22.
- 4. Authorize the appropriation of \$20,000 into expenditure account number 100.4033.50221.30187, Overtime-Safety ABC-OTS Grant 21-22.

### Attachments: Staff Report

ABC-OTS Agreement No. 22-OTS09 Resolution No. 11361

# 3.5. Agreement with Raftelis Financial Consultants for preparing the Water and Sanitation Rate Study.

### **Recommended Action:**

Approve the agreement with Raftelis Financial Consultants in the amount of \$85,016 for the Water and Sanitation Rate Study; and authorize the Mayor and City Clerk to execute on behalf of the City.

Attachments: Staff Report

Rating Summation Professional Services Agreement

# 3.6. Agreement with Chandler Asset Management, Inc. for Investment Services for the City for Fiscal Years 2021-2022 through 2023-2024.

### **Recommended Action:**

- 1. Approve the three-year agreement, commencing November 15, 2021, with two optional one-year extensions, with Chandler Asset Management, Inc. in the total amount of \$270,000 (\$90,000 per year); and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the appropriation of \$60,000 from the General Fund unreserved fund balance (for fiscal year 2021-2022) to expenditure account number 100.1201.51670.0000.

#### Attachments: Staff Report

Professional Services Agreement Chandler Presentation to City of Orange Investment Advisory Committee

3.7. Agreement with Secoy Architects, Inc. for architectural design and construction support for Civic Center Weimer Room and Administration Lobby Remodel.

### Recommended Action:

- 1. Approve agreement with Secoy Architects, Inc. in the amount of \$58,492.50, representing an original amount of \$53,175 plus a 10% contingency of \$5,317.50 for Civic Center Weimer Room and Administration Lobby Remodel; and authorize the Mayor and City Clerk to execute on behalf of the City.
- Authorize the appropriation of \$320,000 from General Fund (500) to 500.5028.56020.20494 for both architectural design and construction phase of the Civic Center Weimer Room and Administration Lobby Remodel.

 Attachments:
 Staff Report

 Professional Services Agreement with Secoy Architects, Inc.

3.8. Historic Property Preservation Agreements (Mills Act Contracts) for 26 qualified historic properties.

### **Recommended Action:**

Approve 26 Mills Act Contracts between the City of Orange and the identified property owners for the preservation and rehabilitation of qualified historic properties; and authorize the Mayor and City Clerk to execute the contracts on behalf of the City.

Staff Report	
Attachment 1 - Table Summary of 26 Mills Act Applications	
Attachment 2 - Fall 2021 Applicant Property Photographs	
Attachment 3 - Mills Act Contract MAC-378.0-21	
Attachment 4 - Mills Act Contract MAC-384.0-21	
Attachment 5 - Mills Act Contract MAC-388.0-21	
Attachment 6 - Mills Act Contract MAC-389.0-21	
Attachment 7 - Mills Act Contract MAC-390.0-21	
Attachment 8 - Mills Act Contract MAC-391.0-21	
Attachment 9 - Mills Act Contract MAC-392.0-21	
Attachment 10 - Mills Act Contract MAC-393.0-21	
Attachment 11 - Mills Act Contract MAC-394.0-21	
Attachment 12 - Mills Act Contract MAC-395.0-21	
Attachment 13 - Mills Act Contract MAC-396.0-21	
Attachment 14 - Mills Act Contract MAC-397.0-21	
Attachment 15 - Mills Act Contract MAC-398.0-21	
Attachment 16 - Mills Act Contract MAC-399.0-21	
Attachment 17 - Mills Act Contract MAC-400.0-21	
Attachment 18 - Mills Act Contract MAC-401.0-21	
Attachment 19 - Mills Act Contract MAC-402.0-21	
Attachment 20 - Mills Act Contract MAC-403.0-21	
Attachment 21 - Mills Act Contract MAC-404.0-21	
Attachment 22 - Mills Act Contract MAC-405.0-21	
Attachment 23 - Mills Act Contract MAC-406.0-21	
Attachment 24 - Mills Act Contract MAC-407.0-21	
Attachment 25 - Mills Act Contract MAC-408.0-21	
Attachment 26 - Mills Act Contract MAC-409.0-21	
Attachment 27 - Mills Act Contract MAC-410.0-21	
Attachment 28 - Mills Act Contract MAC-411.0-21	
	Attachment 1 - Table Summary of 26 Mills Act ApplicationsAttachment 2 - Fall 2021 Applicant Property PhotographsAttachment 3 - Mills Act Contract MAC-378.0-21Attachment 4 - Mills Act Contract MAC-384.0-21Attachment 5 - Mills Act Contract MAC-388.0-21Attachment 6 - Mills Act Contract MAC-389.0-21Attachment 7 - Mills Act Contract MAC-390.0-21Attachment 8 - Mills Act Contract MAC-391.0-21Attachment 9 - Mills Act Contract MAC-393.0-21Attachment 10 - Mills Act Contract MAC-393.0-21Attachment 11 - Mills Act Contract MAC-393.0-21Attachment 12 - Mills Act Contract MAC-393.0-21Attachment 13 - Mills Act Contract MAC-394.0-21Attachment 13 - Mills Act Contract MAC-396.0-21Attachment 13 - Mills Act Contract MAC-396.0-21Attachment 13 - Mills Act Contract MAC-397.0-21Attachment 15 - Mills Act Contract MAC-398.0-21Attachment 16 - Mills Act Contract MAC-398.0-21Attachment 17 - Mills Act Contract MAC-399.0-21Attachment 18 - Mills Act Contract MAC-399.0-21Attachment 19 - Mills Act Contract MAC-402.0-21Attachment 10 - Mills Act Contract MAC-400.0-21Attachment 20 - Mills Act Contract MAC-401.0-21Attachment 21 - Mills Act Contract MAC-403.0-21Attachment 22 - Mills Act Contract MAC-405.0-21Attachment 23 - Mills Act Contract MAC-406.0-21Attachment 24 - Mills Act Contract MAC-406.0-21Attachment 25 - Mills Act Contract MAC-408.0-21Attachment 26 - Mills Act Contract MAC-408.0-21Attachment 27 - Mills Act Contract MAC-409.0-21Attachment 26 - Mills Act Contract MAC-409.0-21Atta

3.9. First Amendment to Agreement with Siemens Industry, Inc. for implementation of additional security access control and video camera management for the new Fire Station No. 1 and Headquarters.

### Recommended Action:

- 1. Approve amendment with Siemens Industry, Inc. in an amount of \$29,172.18 for additional implementation of security access control and video camera management; and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the appropriation of \$29,172.18 from the Capital Bond Proceeds unreserved fund balance to expenditure account number 553.5011.56020.20400,

CIP - Building And Improvements-Fire Station No. 1.

Attachments: Staff Report

First Amendment to Agreement with Siemens Industry, Inc.

3.10. First Amendment to Permit Agreement with Los Angeles SMSA Limited Partnership, dba Verizon Wireless.

### Recommended Action:

Approve First Amendment with Los Angeles SMSA Limited Partnership, dba Verizon Wireless; and authorize the Mayor and City Clerk to execute on behalf of the City.

Attachments: Staff Report

First Amendment to Permit Agreement

3.11. Addendum 3D to the existing Water Conservation Participation Agreement with the Municipal Water District of Orange County (MWDOC) for implementation of the Dedicated Irrigation Meters Measurement Program.

### **Recommended Action:**

- 1. Approve Addendum 3D to the existing Water Conservation Participation Agreement with Municipal Water District of Orange County (MWDOC) for implementation of the Dedicated Irrigation Meters Measurement Program and authorize the Public Works Director to execute on behalf of the City.
- 2. Authorize the appropriation of \$95,444.88 from the Water Fund unreserved fund balance to expenditure account number 600.8011.53441.00000, Water Fund Water Conservation Items.

Attachments: Staff Report

Addendum 3D to Water Conservation Participation Agreement

# 3.12. Participation in a one-time Intergovernmental Transfer with the California Department of Health Care Services and Cal Optima.

### Recommended Action:

- 1. Approve agreements with the California Department of Health Care Services and Cal Optima in the amount of \$487,146, representing \$405,955 in unreimbursed Medicare revenue plus an \$81,191 assessment fee, for a one-time Intergovernmental Transfer; and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the transfer of \$ 487,146 of reimbursable funds to the California Department of Health Care Services.

### Attachments: Staff Report

Intergovernmental Agreement regarding transfer of public funds between the City of Orange and DHCS Provider Agreement between the City of Orange and CalOptima

# 3.13. Appropriation of \$61,574.49 in State of California Office of Emergency Services funding received.

### **Recommended Action:**

- 1. Accept into the City's revenue budget \$61,574.49 in strike team reimbursement funds from the California Office of Emergency Services (Cal-OES), into the revenue account numbers for Cal-OES reimbursements as specified in Section 6 of the staff report.
- 2. Authorize the appropriation of \$61,195.61 into the expenditure account numbers for Overtime-Safety as specified in Section 6 of the staff report.
- 3. Authorize the appropriation of \$378.88 into the expenditure account numbers for Strike Team Expenditures as specified in Section 6 of the staff report.

Attachments: Staff Report

3.14. Approval of plans and specifications for Annual Concrete Replacement, Fiscal Year 2021-2022; and authorization to advertise Bid No. 21-22.19.

### **Recommended Action:**

- 1. Approve plans and specifications and authorize advertising for bids for Annual Concrete Replacement, Fiscal Year 2021-2022; SP-4181.
- 2. Authorize the appropriation of \$400,000 from Citywide TSIP unreserved fund balance to expenditure account number 287.5011.56330.13120, Citywide TSIP Pavement Management Program.

Attachments: Staff Report

### Location Maps

### 3.15. Claims for Damages.

### Recommended Action:

Deny the following claims and refer to City Attorney and Claims Adjuster:

- 1. AAA a/s/o Kristyn Vonrotz
- 2. Jose A. Perez
- 3. Perry Rodriguez
- 4. Tomasa Cuevas Trujillo
- 5. Maria De Jesus Baez
- 6. Marcos Quinones
- 7. SoCal Gas
- 8. Michele Arico
- 9. Estate of Aden Uriostegui
- 10. Kathleen Uriostegui
- 11. Servando Uriostegui
- 12. Roberto J. Reyes

### Attachments: Staff Report

# 3.16. Award of Contract to Calpromax Engineering, Inc. for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022; Bid No. 21-22.09.

### **Recommended Action:**

- 1. Authorize the appropriation of \$34,800 from Traffic Improvement-Measure M2 (263) unreserved fund balance to expenditure account number 263.5011.56330.30162, Citywide Bus Stop Enhancements at Various Locations, Fiscal Year 2021-2022.
- Award the contract to Calpromax Engineering, Inc. of Placentia, California in the total amount of \$133,100, representing an original amount of \$121,000, plus a 10% contingency of \$12,100, for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022; and authorize the Mayor and City Clerk to execute on behalf of the City.

 Attachments:
 Staff Report

 Bid Abstract
 Contract with Calpromax Engineering, Inc.

3.17. Award of Contract to CT&T Concrete Paving, Inc. for Community Development Block Grant Americans with Disabilities Act Wheelchair Access Ramps at Various Locations Project Fiscal Year 2021-2022; Bid No. 21-22.07.

### Recommended Action:

- 1. Authorize the transfer of \$70,000 from 310.9645.57130.11070 CDBG Contingency to 310.9645.56330.11328 FY22 CDBG American with Disabilities Act Improvements Access Ramps.
- Authorize the amendment of Memorandum of Understanding (AGR-6648.D) to increase the proposed project's funding by \$70,000, from \$68,430 to \$138,430; amend the Project Description to reflect the revised project scope; and authorize the City Manager to execute the amendment.
- 3. Award the contract to CT&T Concrete Paving, Inc. in the total amount of \$104,170, representing an original bid amount of \$94,700, plus a 10% contingency of \$9,470, for Community Development Block Grant Americans with Disabilities Act Wheelchair Access Ramps at Various Locations Project Fiscal Year 2021-2022; and authorize the Mayor and City Clerk to execute on behalf of the City.

# Attachments: Staff Report Bid Abstract Contract with CT&T Concrete Paving, Inc. Location Maps

3.18. First Amendment to Contract with Diversified Thermal Services, Inc. for preventive maintenance for heating ventilation and air conditioning equipment at various City buildings, Bid No. 189-19 (SP-4076).

### **Recommended Action:**

Approve the First Amendment to Contract with Diversified Thermal Services, Inc. for \$150,000; and authorize the Mayor and City Clerk to execute on behalf of the City.

### Attachments: Staff Report

First Amendment to Contract

3.19. Second Reading and adoption of an Ordinance of the City Council of the City of 7.02 of Orange deleting Chapter the Orange Municipal Code (the Water Conservation and Water Supply Shortage Program) and adopting new Chapter 7.02 (the Water Shortage Contingency Response ordinance). Ordinance No. 16-21.

### Recommended Action:

Adopt Ordinance No. 16-21.

Attachments: Staff Report Ordinance No. 16-21

3.20. Authorization to purchase signage, traffic control devices, roadway material, and vehicle parts and labor services for the Public Works Field Services Division.

### Recommended Action:

- 1. Approve purchase order for traffic control devices and signage with BC Traffic Specialists for \$60,000.
- 2. Approve purchase order for concrete material and delivery with Gary Bale Redi Mix for \$60,000.
- 3. Approve purchase order for parts and services with Cal-State Auto Parts for \$40,000.
- 4. Approve purchase order for parts and services with Fire Solutions Apparatus for \$60,000.
- 5. Approve purchase order for parts and services with Pete's Road Service, Inc., a sole source vendor, for \$75,000.

Attachments: Staff Report

3.21. Authorization to purchase one vehicle for the Orange Fire Department, three motorcycles and seven vehicles for the Police Department, and four vehicles for the Public Works Department using a Cooperative Purchasing Agreement.

### Recommended Action:

- 1. Approve the purchase of one Pierce Tiller Arrow XT Fire Truck for \$1,689,952 from South Coast Fire Equipment.
- 2. Approve the purchase of safety equipment and supplies needed to equip the Fire Apparatus from various lowest qualified vendors for \$480,000.
- 3. Approve the appropriation of \$2,169,952 from City Infrastructure Bond unreserved fund balance to expenditure account number 553.5023.55212.V2231, City Infrastructure Bond- Motor Vehicle Replacement.
- 4. Approve the purchase of three 2022 BMW motorcycles for \$85,710.
- 5. Approve the purchase of five 2022 Ford Explorers Police Pursuit Rated, one Ford Explorer K-9 Utility, and two 2022 Ford F-150 Trucks for \$433,442 from Villa Ford.

6. Approve the purchase of two 2022 Ford Explorer and one 2022 Chevy Bolt for \$101,480 from National Auto Fleet Group.

Attachments: Staff Report HGAC FS12-19 Bid

### 3.22. Authorization to purchase Fire Station 4 apparatus door replacement.

### **Recommended Action:**

Approve purchase order for Fire Station 4 apparatus door replacement with Orange County Overhead Door Company for \$48,550.

### Attachments: Staff Report

Orange County Overhead Door Estimate

3.23. Authorization to purchase furniture, fixtures, and equipment and site furnishings totaling \$807,000 for the new Fire Headquarters and Station No. 1.

### **Recommended Action:**

- 1. Approve the purchase of furniture from Goforth & Marti dba G/M Business Interiors for a total of \$300,000.
- Authorize the City Manager to execute contracts and purchase orders in excess of \$30,000 relating to the purchase and installation of furniture, fixtures and equipment and site furnishings from various vendors in the amount of \$507,000 for the new Fire Headquarters and Station No. 1.
- 3. Authorize the appropriation of \$807,000 from the Capital Bond Proceeds unreserved fund balance to expenditure account 553.5011.56031.20400 - Capital Bond Proceeds - Fire Station No. 1 and Headquarters.

Attachments: Staff Report

### 3.24. Water rate pass-through notice for Calendar Year 2022.

#### **Recommended Action:**

Receive and file.

 Attachments:
 Staff Report

 Postcard containing pass-through information

### 3.25. Monthly Treasurer's Reports for July, August, and September 2021.

### **Recommended Action:**

Receive and file.

### Attachments: Staff Report

Investment Report for July 2021 Investment Report for August 2021 Investment Report for September 2021 3.26. Classification, compensation, and terms of employment of Part-Time and Seasonal employees. Resolution No. 11359.

#### **Recommended Action:**

Adopt Resolution No. 11359. A Resolution of the City Council of the City of Orange relating to the classification, compensation, and terms of employment for Part-Time and Seasonal employees of the City of Orange effective July 1, 2021, through and including June 30, 2022, and repealing Resolution No. 11280 and amendments thereto.

Attachments: Staff Report Resolution No. 11359

3.27. Adoption of Fiscal Year Ended June 30, 2021, Measure M2 Expenditure Report. Resolution No. 11360.

#### **Recommended Action:**

Adopt Resolution No. 11360. A Resolution of the City Council of the City of Orange concerning the Fiscal Year Ended June 30, 2021, Measure M2 Expenditure Report.

- Attachments:
   Staff Report

   Resolution No. 11360
   City of Orange M2 Expenditure Report for the Fiscal Year Ended

   June 30, 2021
   Staff Report
- 3.28. Authorization to submit a pavement rehabilitation project application to the Orange County Transportation Authority for funding under Pavement Management Relief Funding Program. Resolution No. 11362.

### **Recommended Action:**

Adopt Resolution No. 11362. A Resolution of the City Council of the City of Orange approving and authorizing the project list submittal for Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) funding through the Orange County Transportation Authority 2021 Pavement Management Relief funding program.

Attachments: Staff Report Resolution No. 11362 Location Map

3.29. Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative to repeal SB 9 and SB 10, and restore local control over zoning and land use decisions. Resolution No. 11363.

### **Recommended Action:**

Adopt Resolution No. 11363. A Resolution of the City Council of the City of Orange Expressing Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative to Amend Article XI of the Constitution of the State of California to Make Zoning and Land

Use Community Affairs, and Not of State Interest.

Attachments: Staff Report Resolution No. 11363

3.30. Support for Federal PFAS Legislation to protect ratepayers and water agencies. Resolution No. 11364.

### **Recommended Action:**

Adopt Resolution No. 11364. A Resolution of the City Council of the City of Orange expressing support for Federal PFAS Legislation protecting ratepayers and water and wastewater agencies.

Attachments: Staff Report

Resolution No. 11364

### END OF CONSENT CALENDAR

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### 4. **REPORTS FROM MAYOR MURPHY**

### 5. **REPORTS FROM COUNCILMEMBERS**

An opportunity for Councilmembers to make a brief announcement, report, or request. No action(s) will be taken pursuant to Government Code Section 54954.2(3).

- 5.1. Highlight Local Business (Gutierrez & Barrios)
- 5.2. Parking Permit Application Process (Barrios)
- 5.3. Update on Sully Miller Property (Barrios)

### 6. REPORTS FROM BOARDS, COMMITTEES, AND COMMISSIONS

- 7. ADMINISTRATIVE REPORTS
- 8. **REPORTS FROM CITY MANAGER**

### 9. LEGAL AFFAIRS

9.1. Approval of the Orange Police Department's recommendation not to award a Towing and Storage Services Agreement to Alberto's Towing based upon its failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021.

### **Recommended Action:**

Approve the Orange Police Department's recommendation not to award a Towing and Storage Services Agreement to Alberto's Towing based upon its failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021, as detailed in the staff report.

Attachments:Staff ReportStaff Report for Agenda Item 3.14 Dated June 8 2021RFP 20-21.39 Dated March 4 2021

### 10. PUBLIC HEARINGS

10.1. Continued Public Hearing to consider an ordinance amending Titles 16 and 17 of the Orange Municipal Code to establish development standards and streamlined subdivision and entitlement procedures for small lot subdivisions in multi-family residential and neighborhood mixed use zones. (Continued from September 14, 2021)

### **Recommended Action:**

- 1. Introduce and conduct First Reading of Ordinance No. 15-21. An Ordinance of the City Council of the City of Orange amending Title 16 and Title 17 of the Orange Municipal Code relating to regulation of small lot subdivisions.
- 2. Adopt Resolution No. 11354. A Resolution of the City Council of the City of Orange approving Small Lot Subdivision Guidelines.

Attachments:	Staff Report
	Attachment 1 Ordinance No.15-21
	Attachment 2 Ordinance No. 15-21 (Redlined)
	Attachment 3 Resolution No. 11354 (Including Small Lot Subdivision
	<u>Guidelines)</u>
	Attachment 4 Planning Commission Resolution No. PC 17-21
	Attachment 5 Planning Commission Resolution PC 18-21
	Attachment 6 Planning Commission Staff Report July 19, 2021
	Attachment 7 Planning Commission Minutes July 19, 2021
	Attachment 8 Comparative Representative Site Plans

### 11. ADJOURNMENT

The next Regular City Council meeting will be held on Tuesday, December 14, 2021, at 6:00 p.m., in the Council Chamber, with Closed Session beginning at 5:00 p.m. if necessary.

I, Pamela Coleman, CMC, City Clerk for the City of Orange, do hereby declare, under penalty of perjury, that a full and correct copy of this agenda was posted pursuant to Government Code Section 54950 et. seq., at the following locations: Orange Civic Center kiosk and Orange City Clerk's Office at 300 E. Chapman Avenue, Orange Main Public Library, 407 E. Chapman Avenue, Police facility at 1107 N. Batavia Street, and uploaded to the City's website www.cityoforange.org.

Date posted: November 4, 2021



**City Council** 

Item #: 3.1	1. 11/9/2021	File #: 21-0605
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Pamela Coleman, City Clerk	

### 1. SUBJECT

Waive reading in full of all ordinances on the Agenda.

### 2. SUMMARY

This item asks the City Council to waive the reading in full of all ordinances on the agenda (if any) and approve their reading by title only.

State law requires that all ordinances be read in full either at the time of the introduction or at the time of passage, unless a motion waiving further reading is adopted by a majority of the City Council (Gov. Code § 36934).

### 3. RECOMMENDED ACTION

Approve.

### 4. ATTACHMENTS



**City Council** 

Item #: 3.1	1. 11/9/2021	File #: 21-0605
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Pamela Coleman, City Clerk	

### 1. SUBJECT

Waive reading in full of all ordinances on the Agenda.

### 2. SUMMARY

This item asks the City Council to waive the reading in full of all ordinances on the agenda (if any) and approve their reading by title only.

State law requires that all ordinances be read in full either at the time of the introduction or at the time of passage, unless a motion waiving further reading is adopted by a majority of the City Council (Gov. Code § 36934).

### 3. RECOMMENDED ACTION

Approve.

### 4. ATTACHMENTS



### **City Council**

Item #: 3.2.	11/9/2021	File #: 21-0614
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Will Kolbow, Assistant City Manager/Administrative Servio	ces Director

### 1. SUBJECT

Confirmation of warrant registers dated October 8, 14, 22, and 28, 2021.

### 2. SUMMARY

The warrant writings for the above listed dates are on file in the Office of the City Clerk for Council reference.

### 3. RECOMMENDED ACTION

Approve.

### 4. ATTACHMENTS



### **City Council**

Item #: 3.2	. 11/9/2021	File #: 21-0614
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Will Kolbow, Assistant City Manager/Administrative Servio	ces Director

### 1. SUBJECT

Confirmation of warrant registers dated October 8, 14, 22, and 28, 2021.

### 2. SUMMARY

The warrant writings for the above listed dates are on file in the Office of the City Clerk for Council reference.

### 3. RECOMMENDED ACTION

Approve.

### 4. ATTACHMENTS



**City Council** 

Item #: 3.3.	11/9/2021	File #: 21-0626
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Pamela Coleman, City Clerk	

### 1. SUBJECT

Approval of meeting minutes of the City Council of the City of Orange for the October 13, 2021, Adjourned Regular Meeting.

### 2. SUMMARY

Submitted for your consideration and approval are the minutes of the above meeting(s).

### 3. RECOMMENDED ACTION

Approve minutes as presented.

### 4. ATTACHMENTS

• October 13, 2021, Adjourned Regular Meeting minutes



**City Council** 

Item #: 3.3.	11/9/2021	File #: 21-0626
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Pamela Coleman, City Clerk	

### 1. SUBJECT

Approval of meeting minutes of the City Council of the City of Orange for the October 13, 2021, Adjourned Regular Meeting.

### 2. SUMMARY

Submitted for your consideration and approval are the minutes of the above meeting(s).

### 3. RECOMMENDED ACTION

Approve minutes as presented.

### 4. ATTACHMENTS

• October 13, 2021, Adjourned Regular Meeting minutes

**MINUTES - DRAFT** 

DRAFT MINUTES – NOT AN OFFICIAL RECORD UNTIL APPROVED BY THE CITY COUNCIL

### City of Orange

City Council

October 13, 2021

The City Council of the City of Orange, California convened on Wednesday, October 13, 2021, at 4:00 p.m. in an Adjourned Regular Meeting in the Council Chamber, 300 E. Chapman Avenue, Orange, California.

### **4:00 PM EMPLOYEE RECOGNITION**

### 1. OPENING/WELCOME

Mayor Murphy welcomed everyone.

### 2. EMPLOYEE SERVICE AWARDS

Recognition of employee service.

### 3. RECESS

The City Council recessed at 4:22 p.m. and convened in Closed Session.

### 4:15 PM CLOSED SESSION

### 1. ROLL CALL

Councilmember Tavoularis joined Closed Session at 4:35 p.m.

**Present:** Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy **Absent:** None

### 2. PUBLIC COMMENTS

### Public Speakers

The following spoke in support of Mary's Kitchen: Ellen Roy, Lisa Pedersen, Curt Johnston, Paul Hyek, Jeff Pedersen, Nancy VanValkenburgh, Derek King, Renee Rowley, Amy Tamayose, Edward Saxelby, James Dollins, Sashie Vick, David Oviedo, Shawn Runyan, Imelda Aguilera, Gary Ward, and Jaqueline Perez.

### Written Public Comments

The following submitted emails in support of Mary's Kitchen: Adam Overton, Robbi Nester, Joel Robinson, Bonnie Robinson, El Centro Cultural de Mexico, Rabbi Stephen J. Einstein, Veronica Encinas, KC Marie Pandell, Suzanne Model, Biff Baker, Felicity Figueroa, Kelly Achee, Cindy Ashley, Susan Guilford, League of Women Voters of

Central Orange County Area, Rona Henry, Ramesh C. Joshi, Rev. Rayna Hamre, Christine Morinello, Anonymous, and Karen Stone.

### 3. RECESS TO CLOSED SESSION

The City Council recessed to Closed Session at 5:00 p.m. with all Members present to discuss the following:

### a. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(a) & (d)(1) Name of Case: Mary's Kitchen, et al. v. City of Orange United States District Court Case No. 8:21-cv-01483-JVS-KES

Pursuant to Government Code Section 54956.9(a) & (d)(1) Name of Case: Paula Acken, et al. v. City of Orange Orange County Superior Court Case No. 30-2021-01207319

### b. PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957(b) Title: City Manager

### 4. CLOSED SESSION REPORT

None

### 5. ADJOURNMENT

At 6:05 p.m., the City Council adjourned the Closed Session to its Regular Meeting in the Council Chamber.

### 6:00 PM REGULAR SESSION

### 1. OPENING

Mayor Murphy called the meeting to order at 6:16 p.m.

### 1.1 INVOCATION

Given by Mr. Micah Raebel from St. John's Lutheran Church of Orange.

### 1.2 PLEDGE OF ALLEGIANCE

Led by Mayor Mark A. Murphy.

### 1.3 ROLL CALL

**Present:** Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy **Absent:** None

### 1.4 PRESENTATIONS/ANNOUNCEMENTS

Presentation of Centennial History Book by Rotary Club of Orange.

Proclamation recognizing former Councilmember Michael Alvarez.

Proclamation recognizing 2020 Tokyo Olympian Jack Williams for Archery. Proclamation recognizing 2020 Tokyo Olympian Phillip Chew for Badminton. Proclamation recognizing 2020 Tokyo Olympian Ryan Chew for Badminton. Proclamation recognizing 2020 Tokyo Olympian Sakura Kokumai for Karate.

Proclamation recognizing the 50th Anniversary of 1971 14U Orange Pony World Series Champions. There were members of the team that could not attend due to health issues so Council continued the Proclamation to a future City Council meeting.

Recognition of 2021 9U Olive Pony World Series Champions.

Presentation of Orange County proclamation recognizing Hispanic Heritage month.

### 2. PUBLIC COMMENTS

#### Public Speakers

Michael Condia expressed concerns with 5G cell towers. Anatoli Y. Chalyal greeted the Council and requested more time to speak.

(Item 10.3 was re-ordered to be heard after Public Comment)

### The following item began at 7:00 PM.

# 10.3. Public Hearing to receive input from the community regarding the redrawing of Election District boundaries.

Senior Assistant to the City Manager Aaron Schulze announced in Spanish that live translation services were available upon request, and City Clerk Coleman confirmed

that the Clerk's Office did not receive any requests for live translation services.

Dr. Justin Levitt, National Demographics Corporation, reviewed the redistricting process, and answered Council's questions. The public participation kit is available in paper format and electronically on the City's redistricting website. He suggested grouping communities of interest when drawing district lines before considering population. The first round of draft maps will be presented at the December 14 City Council meeting.

Mayor Murphy opened the Public Hearing at 7:26 p.m.

#### Public Speaker

Sammy Rodriguez declared El Modena barrio's desire for District 5 to remain unchanged.

Mayor Murphy closed the Public Hearing at 7:27 p.m.

A motion was made by Councilmember Monaco, seconded by Councilmember Barrios, to 1) Receive and file the 2020 Census demographic data; 2) Solicit testimony regarding mandatory criteria and traditional criteria to be used for redistricting, adopt criteria for redistricting, and identify communities of interest; 3) Adopt criteria, including identifying communities of interest, for redistricting; and 4) Instruct the City's demographics consultant, National Demographics Corporation (NDC) to prepare draft district maps. The motion carried by the following vote:

Ayes:Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and MurphyNoes:NoneAbsent:None

(Item 10.1 was re-ordered to be heard after Item 10.3)

# 10.1. Public Hearing to consider adopting the City of Orange 2020 Urban Water Management Plan (UWMP). Resolution No. 11357 and Ordinance No. 16-21.

Water Manager Jose Diaz provided the staff report and answered Council's questions. He clarified that current water restrictions and prohibitions will remain in the Orange Municipal Code. In order to comply with new state mandated requirements, the proposed ordinance establishes six levels of water supply shortage response actions. These levels and actions are defined in the Water Shortage Contingency Plan adopted by the City.

Mayor Murphy opened the Public Hearing at 7:46 p.m.; there being no speakers, Mayor Murphy closed the Public Hearing at 7:47 p.m.

A motion was made by Mayor pro tem Nichols, seconded by Councilmember Monaco, to adopt Resolution No. 11357. The motion carried by the following vote:

Ayes:Nichols, Monaco, Barrios, Tavoularis, Gutierrez, and MurphyNoes:DumitruAbsent:None

Resolution No. 11357. A Resolution of the City Council of the City of Orange adopting the City of Orange 2020 Urban Water Management Plan and 2020 Water Shortage Contingency Plan.

# 10.1. Public Hearing to consider adopting the City of Orange 2020 Urban Water Management Plan (UWMP). Resolution No. 11357 and Ordinance No. 16-21.

A motion was made by Mayor pro tem Nichols, seconded by Councilmember Monaco, to introduce and approve Ordinance No. 16-21 for First Reading. The motion carried by the following vote:

Ayes:Nichols, Monaco, Barrios, Tavoularis, Gutierrez, and MurphyNoes:DumitruAbsent:None

Ordinance No. 16-21. An Ordinance of the City Council of the City of Orange deleting Chapter 7.02 of the Orange Municipal Code (the Water Conservation and Water Supply Shortage Program) and adopting new Chapter 7.02 (the Water Shortage Contingency Response Ordinance).

# 10.2. Public Hearing to consider conduit tax-exempt bond financing for the Corp Yard Affordable Housing Project, Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing.

Senior Assistant to the City Manager Schulze provided a brief staff report.

Mayor Murphy opened the Public Hearing at 7:51 p.m.; there being no speakers, Mayor Murphy closed the Public Hearing at 7:51p.m.

A motion was made by Councilmember Monaco, seconded by Mayor pro tem Nichols, to adopt Resolution No. 11294. The motion carried by the following vote:

Ayes: Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy Noes: None

Absent: None

Resolution No. 11294. A Resolution of the City Council of the City of Orange approving the issuance by the California Municipal Finance Authority of multifamily housing revenue bonds for the affordable housing project located at 637 West Struck Avenue.

(The Consent Calendar was re-ordered to be heard after Item 10.2)

### 3. CONSENT CALENDAR

All items on the Consent Calendar are considered routine and are enacted by one motion approving the recommended action listed on the Agenda. Any member of the City Council, staff or the public may request an item be removed from the Consent Calendar for discussion or separate action. Unless otherwise specified in the request to remove an item from the Consent Calendar, all items removed shall be considered immediately following action on the remaining items on the Consent Calendar.

### 3.1. Waive reading in full of all ordinances on the Agenda.

ACTION: Approved.

### 3.2. Confirmation of warrant registers dated September 2, 10, 16, 24, and 30, 2021.

ACTION: Approved.

3.3. Approval of meeting minutes of the City Council of the City of Orange for the September 14, 2021, Regular Meeting.

ACTION: Approved minutes as presented.

3.4. Agreement with VCI Event Technology for audio, lighting, electrical, and staging services at the Tree Lighting Ceremony and Candlelight Choir Procession and the Third of July Celebration, and appropriation of \$41,000 in unreserved General Fund to support Fiscal Year 2021-2022 City special event expenses.

ACTION: 1) Approved agreement with VCI Event Technology in the amount not to exceed \$452,589.67 for audio, lighting, electrical, and staging services; and authorized the Mayor and City Clerk to execute on behalf of the City; and 2) Authorized the appropriation of \$41,000 in General Fund unreserved fund balance into expenditure account number 100.7015.51780.00000, Other Contractual Services.

# 3.5. Third Amendment to the Water Supply and Service Agreement with Irvine Ranch Water District.

Item 3.5 was removed from the Consent Calendar for separate consideration by Councilmember Dumitru and Councilmember Gutierrez.

In response to Council's questions, staff replied that the agreement with Irvine Ranch Water District (IRWD) is part of the regional effort to remove and prevent Per-and polyfluoroalkyl substances (PFAS) contamination to the groundwater basin. Water Manager Diaz added that all Orange County Water District member agencies have agreed to pay for PFAS treatment even if they are not affected; therefore, approval of the agreement ultimately benefits the City by reducing PFAS levels and preventing further contamination inland and to other wells.

ACTION: A motion was made by Councilmember Monaco, seconded by Councilmember Gutierrez, to approve Third Amendment to the Water Supply and Service Agreement with Irvine Ranch Water District; and authorize the Mayor and City Clerk to execute on behalf of the City. The motion carried by the following vote:

Ayes:Nichols, Monaco, Barrios, Tavoularis, Gutierrez, and MurphyNoes:Dumitru

Absent: None

# 3.6. First Amendment to Professional Services Agreement with CSG Consultants, Inc. for building inspection services.

ACTION: Approved First Amendment with CSG Consultants, Inc. to increase the not-to-exceed amount by \$30,000 (total not-to-exceed \$60,000), for building inspection services; and authorized the Mayor and City Clerk to execute on behalf of the City.

3.7. Second Amendment to Agreement with Axon Enterprise, Inc. for body worn cameras.

ACTION: 1) Approved amendment with Axon Enterprise, Inc. for 34 body worn cameras and equipment in an amount not to exceed \$96,099.26; and authorized the Mayor and City Clerk to execute on behalf of the City; and 2) Authorized the appropriation of \$84,579.83 from the Computer Replacement (790) unreserved fund balance into expenditure account number 790.4011.56032.20337 Computer Replacement - Mobile Audio Video and Body Worn Cameras.

3.8. First Amendment to Attorney Services Agreement with Everett Dorey LLP to provide legal services, including representation and defense of the City, relative to the termination of the License Agreement with Mary's Kitchen.

ACTION: 1) Approved a First Amendment to Attorney Services Agreement with Everett Dorey LLP in the amount of \$100,000; and authorized the Mayor and City Clerk to execute on behalf of the City; and 2) Authorized the appropriation of \$100,000 from the General Fund unreserved fund balance to expenditure account number 100.0301.51600.00000, General Fund - Legal Services.

3.9. Appropriation of \$31,000 in Community Development Block Grant funds from the Coronavirus Aid, Relief, and Economic Security Act for the Homeless Outreach Program.

ACTION: Authorized the appropriation of \$31,000 into the following expenditure accounts: \$2,000, 310.4011.51030.30180 - Cellular Phones; \$2,000, 310.4011.53030.30180 - Uniforms; and \$27,000, 310.4011.55131.30180 - Equipment.

3.10. Approval of plans and specifications for Prospect & Spring Right Turn Lane Modification Project; authorization to advertise Bid No. 21-22.12, SP-4131; and appropriate funds from various expenditure accounts.

ACTION: 1) Approved plans and specifications and authorized advertising for bids for Prospect & Spring Right Turn Lane Modification Project; and 2) Authorized the appropriation of \$409,000 from Unreserved Fund (287) to 287.5011.56330.20458 Prospect & Spring Right Turn Lane Modification.

3.11. Appropriation of \$953.86 in Fiscal Year 2018-2019 and 2019-2020 redistributed Edward Byrne Memorial Justice Assistance Grant Program funds from the County of Orange.

ACTION: 1) Accepted into the City's revenue budget \$602.70 in Justice Assistance Grant funds from the County of Orange, into account number revenue 353.4011.45150.30129, Federal Grants - 2019 JAG; 2) Accepted into the Citv's revenue budget \$351.16 in Justice Assistance Grant funds from the County of Orange, into revenue account number 353.4011.45150.30173, Federal Grants - 2020 JAG; 3) \$602.70 expenditure Authorized the appropriation of into account number 353.4011.55131.30129, Equipment - 2019 JAG; and 4) Authorized the appropriation of \$351.16 into expenditure account number 353.4011.55131.30173, Equipment - 2020 JAG.

# 3.12. Appropriation of \$231,864.43 in State of California Office of Emergency Services funding received.

ACTION: 1) Accepted into the City's revenue budget \$231,864.43 in strike team reimbursement funds from the California Office of Emergency Services (Cal-OES), into revenue account number 100.3024.48212.40242 - General Fund - Apple Fire: 2) Authorized the appropriation of \$231,288.08 into expenditure account number 100.3024.50221.40242 - General Fund - Apple Fire for Overtime-Safety; and 3) \$576.35 into the appropriation of expenditure account number Authorized 100.3024.53860.40242 - General Fund - Apple Fire for Strike Team Expenditures.

# 3.13. Appropriation of \$33,874 in designated grant funding received from California Library Literacy Services.

ACTION: 1) Accepted into the City's revenue budget a \$33,874 grant from California Library Literacy Services, into revenue account number 100.2001.45290.30170, General Fund - California Library Literacy Services Grant; and 2) Authorized the appropriation of \$33,874 to California Library Literacy Services Grant into the following expenditure account numbers: \$12,000, 100.2001.50312.30170 - Part-time Misc. Salaries; and \$21,874, 100.2001.53001.30170 - Materials and Supplies.

# 3.14. Final Acceptance of Bid No. 20-21.43; SP-4161 Orange Police Department Evidence Freezer; and authorization to file Notice of Completion.

ACTION: Accepted Orange Police Department Evidence Freezer as complete and authorized staff to file Notice of Completion with the County Recorder.

# 3.15. Approval of plans and specifications for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022; and authorization to advertise Bid No. 21-22.09.

ACTION: 1) Approved plans and specifications and authorize advertising for bids for the Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022; and 2) Approved the use of sole-source supplier, Tolar Manufacturing Company, of bus stop shelters and correlating street furniture for the Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022.

3.16. Approval of plans and specifications for Community Development Block Grant Fiscal Year 2021-2022 Beverly Neighborhood Street Rehabilitation Project and authorization to advertise Bid No. 21-22.11.

Item 3.16 was removed from the Consent Calendar for separate consideration by Councilmember Gutierrez.

In response to Council's question regarding the selection of streets for a rehabilitation project, staff explained that CDBG funds are required to be used for low to moderate income individuals. For street rehabilitation projects, the U.S. Department of Housing and Urban Development provides census tracts of areas that meet their low to moderate criteria.

ACTION: A motion was made by Mayor pro tem Nichols, seconded by Councilmember Monaco, to approve plans and specifications and authorize advertising for bids for the Community Development Block Grant Fiscal Year 2021-22 Beverly Neighborhood Street Rehabilitation Project; SP-4179. The motion carried by the following vote:
Ayes: Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy
None
Absent: None

3.17. Approval of plans and specifications for SP-4130; Police Headquarters Atrium Rehabilitation and authorization to advertise Bid No. 21-22.13.

ACTION: Approved the plans and specifications and authorized advertising for bids for SP-4130; Police Headquarters Atrium Rehabilitation.

# 3.18. Final Acceptance of Bid No. 20-21.48; SP-4158, Annual Slurry Seal at Various Locations, FY 20-21; and authorization to file Notice of Completion.

ACTION: Accepted Bid No. 20-21.48; SP-4158, Annual Slurry Seal at Various locations FY 20-21 as complete and authorized staff to file Notice of Completion with the County Recorder.

### 3.19. Claims for Damages.

ACTION: Denied the following claims and referred to City Attorney and Claims Adjuster:

- 1. David Daleo
- 2. Rhonda Vera Cruz
- 3. Emilio Casas Cortez
- 4. Alejandro Razo
- 5. Salvador Miramontes-Robles
- 6. Antonio Tereza-Salgado
- 7. Antonio Tereza-Vazquez
- 8. Steven Lewis
- 3.20. Second Amendment to Contract with General Pump Company, Inc. for well maintenance and repair services.

ACTION: Approved Second Amendment with General Pump Company, Inc. and authorized the Mayor and City Clerk to execute on behalf of the City.

# 3.21. Authorize purchase of one vehicle for the Orange Fire Department and two vehicles for the Orange Police Department using a Cooperative Purchasing Agreement.

ACTION: 1) Authorized the purchase of one Pierce Enforcer Fire Apparatus in the amount of \$921,292; 2) Authorized the purchase of safety equipment and supplies needed to equip the Fire Apparatus from various lowest qualified vendors in the amount of \$220,000; 3) Authorized the replaced Fire Seagrave Pumper, 2003 Seagrave to be donated to Queretaro, Mexico; and 4) Authorized the purchase of two 2022 mid-sized utility vehicles from National Auto Fleet Group in the amount of \$80,051.

# 3.22. Authorize purchase of two vehicles for the Orange Fire Department using a Cooperative Purchasing Agreement.

ACTION: Authorized the purchase of two 2022 mid-sized utility vehicles from National Auto Fleet Group in the amount of \$154,887.

# 3.23. Authorize purchase of five 800 Megahertz portable radios and associated equipment from Motorola Solutions.

ACTION: Approved the purchase of five 800 Megahertz radios in an amount not to exceed \$43,000, from Motorola Solutions, through Orange County Price Book Agreement #MA-060-21010004.

### Approval of the Consent Calendar

Items 3.5 and 3.16 were removed from the Consent Calendar and heard separately. All other items were approved as recommended.

A motion was made by Councilmember Monaco, seconded by Mayor pro tem Nichols, to approve the Consent Calendar. The motion carried by the following vote:
 Aves: Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy
 Noe: None

Absent: None

### END OF CONSENT CALENDAR

\* \* \* \* \* \* \* \*

### 4. **REPORTS FROM MAYOR MURPHY**

None.

### 5. **REPORTS FROM COUNCILMEMBERS**

### 5.1. Highlight Local Business (Gutierrez, Barrios)

Councilmember Gutierrez highlighted the following local business: Holiday Skate Center. Councilmember Barrios highlighted the following local business: The Potting Shed.

### 6. REPORTS FROM BOARDS, COMMITTEES, AND COMMISSIONS

# 6.1. Accept resignation of Steve Freeman from the Orange Public Library Board of Trustees.

A motion was made by Councilmember Monaco, seconded by Councilmember Gutierrez, to accept the resignation of Trustee Member Steve Freemen effective October 19, 2021, and direct the City Clerk to post a Notice of Vacancy pursuant to the Maddy Act. The motion carried by the following vote:

Ayes:Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and MurphyNoes:NoneAbsent:None

### 7. ADMINISTRATIVE REPORTS

### 7.1. Financial status update for Fiscal Years 2020-21 and 2021-22.

Assistant City Manager/Administrative Services Director Will Kolbow provided a financial status update for FY 2020-21 and 2021-22. He reviewed FY 21 General Fund final revenues, sales tax, and expenditures; and provided a FY 22 General Fund update.

A motion was made by Councilmember Monaco, seconded by Mayor Murphy, to approve the following for FY 2021-22 and FY 2020-21:

### Fiscal Year 2021-22

1) Authorize the appropriation of \$138,000 from the General Fund (100) unreserved fund balance to expenditure account number 100.4021.50001.00000.

2) Authorize the appropriation of \$29,163 from the General Fund (100) unreserved fund balance to expenditure account number 100.0401.50002.00000.

3) Authorize the appropriation of \$573,935 from the SB-2 Building Homes & Jobs Act (312) unreserved fund balance to expenditure account number 312.020152611.30138, Payments to Other Agencies - North SPA Navigation Centers.

#### Fiscal Year 2020-21

4) Authorize the appropriation of \$551,773 from the SB-2 Building Homes & Jobs Act (312) unreserved fund balance to expenditure account number 312.020152611.30138, Payments to Other Agencies - North SPA Navigation Centers.

5) Authorize the appropriation of \$95,965 from the Prop 172 (120) unreserved fund balance to expenditure account number 120.411.53670.12222, Other Maintenance Items - 800 MHZ.

6) Authorize the transfer of \$805,003.02 from the City Infrastructure Bond (553) account number 553.0000.57120.20400 to Merged 2008 Tax Exempt Bonds (954) account number 954.0000.49010.20400.. The motion carried by the following vote:

Ayes: Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy

Noes: None

Absent: None

### 7.2. Orange Plaza Paseo long-term plan and streetscape program.

Historic Planner Marissa Moshier summarized the background of the Paseo, and reviewed the options for a long-term plan and streetscape program.

Council discussed approving both options to allow businesses to open in January with the parklets design in place while studies are being conducted. Council also discussed safety concerns associated with the parklets design.

### Public Speaker

Al Ricci spoke in support of keeping the Paseo open and in support of the parklets design.

After further discussion, a motion was made by Mayor pro tem Nichols, seconded by Councilmember Monaco, to authorize staff to proceed with both recommended actions.

In response to Council's questions, staff verified that Council can choose to extend the

temporary Paseo beyond the current end date of December 31. A discussion regarding the temporary Paseo is scheduled for the December agenda. Councilmember Monaco withdrew his second to the motion.

Mayor Murphy seconded Mayor pro tem's motion to authorize staff to proceed with both options.

Councilmember Barrios made a substitute motion to approve option 2 only.

A motion was made by Councilmember Barrios, seconded by Councilmember Gutierrez, to approve option 2 as follows:

Option 2 - Design of "Parklets"

1) Approve agreement with The Arroyo Group in the amount not-to-exceed \$68,120 for preparation of the Orange Plaza Paseo Streetscape Design Study; and authorize the City Manager and City Clerk to execute on behalf of the City; and

2) Authorize the transfer of \$68,120 from expenditure account 952.9810.56020.20247, City Trf: NW & SW Merged 2003 Taxable Bonds - SAORA Capital Projects, to expenditure account number 952.9810.51670.20492, City Trf: NW & SW Merged 2003 Taxable Bonds - Orange Plaza Paseo.

The motion failed by the following vote:

Ayes: Barrios, and Gutierrez

**Noes:** Nichols, Monaco, Dumitru, Tavoularis, and Murphy

Absent: None

A motion was made by Mayor pro tem Nichols, seconded by Mayor Murphy, to approve options 1 and 2 for the Orange Plaza Paseo long-term plan and streetscape program as follows:

Option 1 - Annual Seasonal Paseo

1) Approve agreement with The Arroyo Group in the amount of \$68,120 for preparation of the Orange Plaza Paseo Streetscape Design Study; and authorize the City Manager and City Clerk to execute on behalf of the City; and

2) Approve agreement with Dudek in the amount of \$146,886 for environmental services for the Orange Plaza Paseo; and authorize the City Manager and City Clerk to execute on behalf of the City; and

3) Authorize the transfer of \$215,006 from expenditure account 952.9810.56020.20247, City Trf: NW & SW Merged 2003 Taxable Bonds - SAORA Capital Projects, to expenditure account number 952.9810.51670.20492, City Trf: NW & SW Merged 2003 Taxable Bonds - Orange Plaza Paseo.

Option 2 - Design of "Parklets"

1) Approve agreement with The Arroyo Group in the amount not-to-exceed \$68,120 for preparation of the Orange Plaza Paseo Streetscape Design Study; and authorize the City Manager and City Clerk to execute on behalf of the City; and

2) Authorize the transfer of \$68,120 from expenditure account 952.9810.56020.20247, City Trf: NW & SW Merged 2003 Taxable Bonds - SAORA Capital Projects, to expenditure account number 952.9810.51670.20492, City Trf: NW & SW Merged 2003 Taxable Bonds - Orange Plaza Paseo.

The motion carried by the following vote:

Ayes: Nichols, Monaco, Dumitru, Tavoularis, and Murphy

**Noes:** Barrios, and Gutierrez

Absent: None

### 7.3. Employment Agreement with interim City Manager Thomas R. Hatch.

A motion was made by Mayor pro tem Nichols, seconded by Councilmember Gutierrez, to approve Employment Agreement with interim City Manager Thomas R. Hatch. The motion carried by the following vote:

Ayes:Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and MurphyNoes:NoneAbsent:None

### 8. **REPORTS FROM CITY MANAGER**

### 8.1. Status of Senate Bill 9 and Senate Bill 10.

Acting City Manager Bonnie Hagan reported that both bills were signed by the Governor in September. Mayor Murphy added that there is an initiative being circulated, supported by several California Mayors, opposing both bills. Staff will provide Council with a report before the bills go into effect.

### 9. LEGAL AFFAIRS

None

### 10. PUBLIC HEARINGS

Items 10.1 and 10.2 were re-ordered to be heard after Item 10.3.

- 10.1. Public Hearing to consider adopting the City of Orange 2020 Urban Water Management Plan (UWMP). Resolution No. 11357 and Ordinance No. 16-21.
- 10.2. Public Hearing to consider conduit tax-exempt bond financing for the Corp Yard Affordable Housing Project, Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing.

Item 10.3 was re-ordered to be heard after Item 2 (Public Comments).

10.3. Public Hearing to receive input from the community regarding the redrawing of Election District boundaries.

### 11. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:00 p.m. in Memory of Rick Collins.

The next Regular City Council meeting will be held on Tuesday, November 9, 2021, at 6:00 p.m., in the Council Chamber, with Closed Session beginning at 5:00 p.m. if necessary.

PAMELA COLEMAN CITY CLERK MARK A. MURPHY MAYOR



City Council

Item #: 3.4.	11/9/2021	File #: 21-0570
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Dan Adams, Chief of Police	

### 1. SUBJECT

Agreement with the State of California Department of Alcoholic Beverage Control for the Alcoholic Beverage Control/Office of Traffic Safety Grant Program from October 1, 2021 through August 31, 2022. Resolution No. 11361.

### 2. SUMMARY

Funding for the Alcoholic Beverage Control/Office of Traffic Safety Grant Program is being provided in the amount of \$20,000 to develop an effective, comprehensive, and strategic approach to reducing underage drinking and the resultant driving injuries and fatalities.

### 3. **RECOMMENDED ACTION**

- 1. Approve agreement with the State of California, Department of Alcoholic Beverage Control in the amount of \$20,000 for the Alcoholic Beverage Control/Office of Traffic Safety Grant Program and authorize the City Manager to execute on behalf of the City.
- Adopt Resolution No. 11361: A Resolution of the City Council of the City of Orange authorizing the Orange Police Department to accept a \$20,000 ABC-OTS Grant from the Department of Alcohol Beverage Control and authorizing the City Manager to execute all grant documents on behalf of the City.
- 3. Accept into the City's revenue budget a \$20,000 grant from the State of California, Department of Alcoholic Beverage Control, into revenue account number 100.4033.45495.30187, ABC-OTS 21-22.
- 4. Authorize the appropriation of \$20,000 into expenditure account number 100.4033.50221.30187, Overtime-Safety ABC-OTS Grant 21-22.

### 4. FISCAL IMPACT

The total appropriations for this grant are funded by the additional revenue received from the State of California, Department of Alcoholic Beverage Control.

### 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

### 6. DISCUSSION AND BACKGROUND

The mission of the Department of Alcoholic Beverage Control (ABC) is to administer the provisions of the Alcoholic Beverage Control Act in a manner that fosters and protects the health, safety, welfare, and economic well-being of the people of the state. In furtherance of this mission, the Orange Police Department has received a \$20,000 grant funded by the Office of Traffic Safety (OTS) through the National Highway Traffic Safety Administration to develop an effective strategic approach to reducing underage drinking, DUI driving injuries and fatalities, property damages, and youth access to alcoholic beverages through education and enforcement. The grant-funded objectives are as follows:

- Conduct two Informed Merchants Preventing Alcohol-Related Tendencies (IMPACT) operations to educate and eliminate alcohol-related crimes
- Conduct two Minor Decoy operations to combat the sale of alcoholic beverages to minors
- Conduct two Shoulder Tap operations to combat the distribution of alcohol to minors

The allocation of the ABC-OTS Grant Program will ensure adequate funding through August 31, 2022.

## 7. ATTACHMENTS

- ABC-OTS Agreement No. 22-OTS09
- Resolution No. 11361



## Agenda Item

City Council

ltem #: 3.4.	. 11/9/2021	File #: 21-0570
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Dan Adams, Chief of Police	

## 1. SUBJECT

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The allocation of the ABC-OTS Grant Program will ensure adequate funding through August 31, 2022.

## 7. ATTACHMENTS

- ABC-OTS Agreement No. 22-OTS09
- Resolution No. 11361

#### SCO ID: 2100-220TS09

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES		
STANDARD AGREEMENT	AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
STD 213 (Rev. 04/2020)	22-OTS09	ABC-2100

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Alcoholic Beverage Control

CONTRACTOR NAME

City of Orange through the Orange Police Department

2. The term of this Agreement is:

START DATE

October 1, 2021

THROUGH END DATE

August 31, 2022

3. The maximum amount of this Agreement is:

\$20,000.00 Twenty thousand dollars and no cents

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

	Exhibits	Title			
	Exhibit A	ibit A Scope of Work			
	Exhibit B	Budget Detail and Payment Provisions			
	Exhibit C *	General Terms and Conditions (GTC 04/2017)			
+	Exhibit D	Special Terms and Conditions	1		

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

City of Orange through the Orange Police Department

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
300 E. Chapman Ave.	Orange	CA	92866
PRINTED NAME OF PERSON SIGNING	TITLE		
Thomas R. Hatch	City Manager		
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED		

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME Department of Alcoholic Beverage Control STATE ZIP CITY CONTRACTING AGENCY ADDRESS CA 95834 Sacramento 3927 Lennane Drive, Suite 100 TITLE PRINTED NAME OF PERSON SIGNING Chief, Business Management Branch Pattye Nelson DATE SIGNED CONTRACTING AGENCY AUTHORIZED SIGNATURE EXEMPTION (If Applicable) CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

#### EXHIBIT A SCOPE OF WORK

#### **Purpose and Description of Services**

Contractor agrees to implement the Department of Alcoholic Beverage Control programs as listed:

- Minor Decoy operations designed to educate and deter licensed locations from selling/furnishing alcohol to minors and shall be conducted at both "On-Sale" and "Off-Sale" licensed establishments within the operation period of the grant.
- Shoulder Tap operations used to detect and deter adult furnishers outside of a licensed business and shall be performed at "Off-Sale" licensed locations to apprehend adults that are unaffiliated with the licensed businesses who are purchasing alcohol for minors outside of the stores within the operation period of the grant.
- Informed Merchants Preventing Alcohol-Related Crime Tendencies (IMPACT) Inspections primary goal is to educate licensees on alcohol related laws to help reduce alcohol-related crime in and around licensed premises. Contractor agrees to conduct visits and inspections of licensed premises identifying areas of non-compliance at "On-Sale" and "Off-Sale" licensed locations within the operation period of the grant.

The project is targeted to reduce underage drinking and the resultant DUI driving injuries and fatalities, and/or property damages, reduce youth access to alcoholic beverages through the education of licensee, enforcement intervention and the impressions of omnipresence of law enforcement.

In addition, contractor agrees to the following goals:

- Raise public awareness that selling, serving and/or furnishing alcoholic beverages to individuals under twenty-one years old is a criminal violation that will be prosecuted by local city and district attorneys.
- Establish and implement a coordinated effort between contractor and ABC, and acknowledges no operations will be conducted until after the contractor's representative has completed training conducted by ABC.
- Issue press releases as follows:
  - 1. To announce the start of the program;
  - 2. At the conclusion of each Minor Decoy Operation held (to announce the number of licensed premises who sold to the minor decoy)
  - 3. At the conclusion of each Shoulder Tap Operation held (to announce the number of adults arrested for purchasing alcoholic beverages for the decoy).
  - 4. At the conclusion of each IMPACT operation held
- Fax (916) 419-2599 or email each press release to the Department's Public Information Officer (pio@abc.ca.gov) as soon as it is released.

- In all press releases, in addition to any credits the agency wishes to give, will include the following statement: "This project is part of the Department of Alcoholic Beverage Control's Minor Decoy/Shoulder Tap Grant Project, funded by the California Office of Traffic Safety through the National Highway Traffic Safety Administration."
- Complete and submit bi-monthly reports, in a format designed by the Department of Alcoholic Beverage Control due no later than 15 days after operations conducted:

On or before **January 17, 2022** (with results of operations October, November & December 2021)

On or before **March 15, 2022** (with results of operations January & February 2022) On or before **May 16, 2022** (with results of operations March & April 2022) On or before **July 15, 2022** (with results of operations May & June 2022) On or before **September 15, 2022** (with results of operations July & August 2022)

- Submit an Executive Summary as part of the final report due on or before September 15, 2022. The summary shall contain the following:
  - 1. An evaluation statement concerning the end product and cost benefits; and a listing of recommended and/or adopted policy or procedure changes, if any, occurring as a result of the project
  - 2. Project personnel identifying the key personnel who worked on the project, together with their job classification, and a brief description of their contribution
  - 3. Problems describe any operational or cost problems that were encountered in project implementation. If known, state alternative methods that would have avoided the problem and increased the effectiveness of the project.
  - 4. Results describe the results of the project in terms of meeting the original objectives as stated in the project agreement. Also, describe the results in terms of how they will be specifically applied for future improvement of the agency's continuing activities relating to alcohol problem prevention and enforcement. Where possible, describe estimated savings resulting from implementing project results.
  - Disclaimer The final report shall include the following: <u>"The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of California, Business, Consumer Services and Housing Agency, or the Department of Alcoholic Beverage Control."</u>
  - Documentation Attach any relevant documents developed. Examples are new or revised forms, diagrams, management reports, photos, coding manuals, instructional manuals, etc.

#### **Contract Term**

The operation period of the grant is October 1, 2021 through August 31, 2022.

#### **Project Representatives**

The project representatives during the term of this agreement will be:

Agreement Number: 22-OTS09 Orange Police Department Page **3** of **3** 

Orange Police Department Michael Murphy, Detective 1107 N. Batavia St. Orange, CA 92867 (714) 744-7581 mmurphy@orangepd.org Department of Alcoholic Beverage Control Diana Fouts-Guter, Grant Coordinator 3927 Lennane Drive, Suite 100 Sacramento, CA 95834 (916) 928-9807 Diana.fouts-guter@abc.ca.gov

Direct all fiscal inquiries to:

Orange Police Department Hilda Montoya 1107 N. Batavia St. Orange, CA 92867 (714) 744-7522 hmontoya@orangepd.org Department of Alcoholic Beverage Control Kristine Okino, Fiscal Grant Analyst 3927 Lennane Drive, Suite 100 Sacramento, CA 95834 (916) 419-2572 Kristine.okino@abc.ca.gov

#### EXHIBIT B BUDGET DETAIL AND PAYMENT PROVISIONS

#### **Invoicing and Payment**

- For services satisfactorily rendered and upon receipt and approval of the invoice, the Department of Alcoholic Beverage Control agrees to pay bi-monthly for approved reimbursable costs per the Budget Detail of personnel overtime and benefits (actual cost).
- Invoices shall clearly reference this contract number (22-OTS09) and must not exceed the contract total authorized amount of \$20,000.00. Invoices are to be submitted on a bi-monthly basis, on the prescribed form designed by the Department of Alcoholic Beverage Control.

Submit to: Department of Alcoholic Beverage Control Attn: Kristine Okino, Grants Fiscal Analyst 3927 Lennane Drive, Suite 100 Sacramento, California 95834

- This agreement is for overtime compensation only.
- Payment shall be made in arrears within 45 days from the receipt of an undisputed invoice.
- Contractor understands in order to be eligible for reimbursement; cost must be incurred on or after the effective date of the project, October 1, 2021 and on or before the project termination date, August 31, 2022.
- Contractor understands any other costs incurred by contractor, other than attendance at initial training and/or personnel overtime and benefits as authorized above, in the performance of this agreement are the sole responsibility of contractor.

#### **Budget Contingency Clause**

- It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this agreement does not appropriate sufficient funds for the program, this agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to contractor or to furnish any other considerations under this agreement and contractor shall not be obligated to perform any provisions of this agreement.
- If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this agreement with no liability occurring to the State, or offer an agreement amendment to contractor to reflect the reduced amount.

#### **Prompt Payment Clause**

• Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

#### EXHIBIT C GENERAL TERMS AND CONDITIONS

- 1. <u>APPROVAL</u>: This agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
- 2. <u>AMENDMENT</u>: No amendment or variation of the terms of this agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the agreement is binding on any of the parties.
- 3. <u>ASSIGNMENT</u>: This agreement is not assignable by the contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
- 4. <u>AUDIT</u>: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
- 5. <u>INDEMNIFICATION</u>: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by contractor in the performance of this agreement.
- 6. <u>DISPUTES</u>: Contractor shall continue with the responsibilities under this agreement during any dispute.
- 7. <u>TERMINATION FOR CAUSE</u>: The State may terminate this agreement and be relieved of any payments should the contractor fail to perform the requirements of this agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the contractor under this agreement and the balance, if any, shall be paid to the contractor upon demand.
- <u>INDEPENDENT CONTRACTOR</u>: Contractor, and the agents and employees of contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
- 9. <u>RECYCLING CERTIFICATION</u>: The contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209.

With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. <u>NON-DISCRIMINATION CLAUSE</u>: During the performance of this agreement, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2,§11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

- 11. <u>CERTIFICATION CLAUSES</u>: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this agreement by this reference as if attached hereto.
- 12. <u>TIMELINESS</u>: Time is of the essence in this agreement.
- 13. <u>COMPENSATION: The consideration to be paid contractor, as provided herein, shall be in</u> <u>compensation for all of contractor's expenses incurred in the performance hereof, including</u> <u>travel, per diem, and taxes, unless otherwise expressly so provided.</u>
- 14. <u>GOVERNING LAW</u>: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
- 15. <u>ANTITRUST CLAIMS: The contractor by signing this agreement hereby certifies that if these</u> services or goods are obtained by means of a competitive bid, the contractor shall comply with the requirements of the Government Codes Sections set out below.
  - a. The Government Code Chapter on Antitrust claims contains the following definitions:
    - "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
- 16. <u>CHILD SUPPORT COMPLIANCE ACT</u>: For any agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
  - a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 17. <u>UNENFORCEABLE PROVISION</u>: In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement have force and effect and shall not be affected thereby.
- PRIORITY HIRING CONSIDERATIONS: If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
- 19. <u>SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING</u> <u>REQUIREMENTS</u>:

- a. If for this contract contractor made a commitment to achieve small business participation, then contractor must within 60 days of receiving final payment under this contract (or within such other time period as may be specified elsewhere in this contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this contract contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then contractor must within 60 days of receiving final payment under this contract (or within such other time period as may be specified elsewhere in this contract) certify in a report to the awarding department: (1) the total amount the prime contractor received under the contract; (2) the name and address of the DVBE(s) that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; (4) that all payments under the contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)
- 20. <u>LOSS LEADER</u>: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

#### EXHIBIT D SPECIAL TERMS AND CONDITIONS

Disputes: Any disputes concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director, Department of Alcoholic Beverage Control, or designee, who shall reduce his decision in writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Department shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnishes to the State a written appeal addressed to the Director of the Department of Alcoholic Beverage Control. The decision of the Director of Alcoholic Beverage Control. The decision of the Director of Alcoholic Beverage Control or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the State.

Cancellation/Termination: This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. No penalty shall accrue to either party because of contract termination.

Contractor Certifications: By signing this agreement, contractor certifies compliance with the provisions of CCC 04/2017, Standard Contractor Certification Clauses. This document may be viewed at: <a href="https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language">https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language</a>

If the State determines that the grant project is not achieving its goals and objectives on schedule, funding may be reduced by the State to reflect this lower level of project activity.

#### **RESOLUTION NO. 11361**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE AUTHORIZING THE ORANGE POLICE DEPARTMENT TO ACCEPT A \$20,000 ABC-OTS GRANT FROM THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL GRANT DOCUMENTS ON BEHALF OF THE CITY.

**WHEREAS**, the California Department of Alcoholic Beverage Control (ABC), in conjunction with the California Office of Traffic Safety (OTS), has awarded the City of Orange a grant in the amount of \$20,000 through its ABC-OTS Grant Program; and

**WHEREAS,** the ABC-OTS Grant funds will be used for conducting police operations for the enforcement of alcoholic beverage laws related to the sale and procurement of alcoholic beverages by minors and providing educational opportunities for ABC licensees; and

**WHEREAS,** using the ABC-OTS Grant funds, the Orange Police Department will conduct at least two of each of the following: Minor Decoy Operations, Shoulder Tap Operations, and IMPACT (Informed Merchants Preventing Alcohol-Related Crime Tendencies) Operations; and

**WHEREAS,** the ABC-OTS Grant funds received do not require matching funds of the City.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Orange does hereby:

1. Approve acceptance of funds from the State of California, Department of Alcoholic Beverage Control ABC-OTS Grant Program in the amount of \$20,000;

2. Approve the expenditure of the ABC-OTS Grant funds for the purposes set forth above; and

3. Authorize the City Manager to enter in a contract with the State regarding the Grant and execute any and all ABC-OTS Grant documents.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

#### STATE OF CALIFORNIA ) COUNTY OF ORANGE ) CITY OF ORANGE )

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange



## Agenda Item

**City Council** 

ltem #: 3.5	. 11/9/2021	File #: 21-0579
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

## 1. SUBJECT

Agreement with Raftelis Financial Consultants for preparing the Water and Sanitation Rate Study.

## 2. SUMMARY

Agreement with Raftelis Financial Consultants to update the Water and Sanitation Rate study and provide final report on rate design and bill impacts.

## 3. RECOMMENDED ACTION

Approve the agreement with Raftelis Financial Consultants in the amount of \$85,016 for the Water and Sanitation Rate Study; and authorize the Mayor and City Clerk to execute on behalf of the City.

## 4. FISCAL IMPACT

The total cost for the agreement is \$85,016 and will be funded in Water Rate Study (20428) through Water Fund (600).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 2: Be a fiscally healthy community

d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

In 2017, the City conducted a comprehensive rate study for the Water and Sanitation Funds to ensure the adequacy of funds for maintenance and operations. Utilizing the public noticing process, the City Council established water rates through January 1, 2022. Due to continually escalating wholesale water supply costs, the effects of the groundwater treatment systems, and ongoing water conservation impacts, the City is in need of a current financial analysis of the City's Water and Sanitation funds to verify balanced revenues and expenditures, while maintaining reasonable fund balances for emergency purposes. These analyses will show if a rate adjustment is needed for a five -year period, to be commenced as early as January 2023. Pursuant to Proposition 218, any proposed increase cannot exceed the City's estimated reasonable cost of providing water service.

As a part of the study, the consultant is to provide the City with financial, economic and general consulting services in the areas of rate-setting, revenue requirement analyses, cost-of-service

Item #: 3.5.

studies, rate design, financial planning and budgeting, and related services. Work on the project is anticipated to begin in December 2021 and to be completed by September 2022.

The Request for Proposal for the Water and Sanitation Rate study was distributed to four firms on August 12, 2021 with a due date of September 27, 2021. Two of the firms, Stantec and Carollo Engineers did not submit a proposal. Staff evaluated the proposals based on the firm's understanding of the project (15 points), description of work (25 points), relevant experience (30 points), project team (20 points), and project schedule (10 points). The consultant's fee schedule and labor rates were submitted in separate sealed envelopes and were reviewed after the rating process was completed. Raftelis Financial Consultants received the highest rank and had the lowest total fee. Below is the summary of the firms that proposed including the ranking and fee:

<u>Firm</u>	<u>Rank</u>	Proposed Fee
Raftelis Financial Consultants	1	\$85,016
Black & Veatch	2	\$85,995

Raftelis Financial Consultants showed a thorough understanding of the project scope and challenges involved, had the most local relevant experience with this type of project, understood the requirements, and proposed a reasonable fee. They are also familiar with the City of Orange through the completion of a previous water and sewer rate study. Therefore, staff is recommending award of the contract to Raftelis Financial Consultants in the amount of \$85,016.

## 7. ATTACHMENTS

- Rating Summation
- Professional Services Agreement



## Agenda Item

City Council

ltem #: 3.5	. 11/9/2021	File #: 21-0579
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

## 1. SUBJECT

Agreement with Raftelis Financial Consultants for preparing the Water and Sanitation Rate Study.

## 2. SUMMARY

Agreement with Raftelis Financial Consultants to update the Water and Sanitation Rate study and provide final report on rate design and bill impacts.

## 3. RECOMMENDED ACTION

Approve the agreement with Raftelis Financial Consultants in the amount of \$85,016 for the Water and Sanitation Rate Study; and authorize the Mayor and City Clerk to execute on behalf of the City.

## 4. FISCAL IMPACT

The total cost for the agreement is \$85,016 and will be funded in Water Rate Study (20428) through Water Fund (600).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 2: Be a fiscally healthy community

d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

In 2017, the City conducted a comprehensive rate study for the Water and Sanitation Funds to ensure the adequacy of funds for maintenance and operations. Utilizing the public noticing process, the City Council established water rates through January 1, 2022. Due to continually escalating wholesale water supply costs, the effects of the groundwater treatment systems, and ongoing water conservation impacts, the City is in need of a current financial analysis of the City's Water and Sanitation funds to verify balanced revenues and expenditures, while maintaining reasonable fund balances for emergency purposes. These analyses will show if a rate adjustment is needed for a five -year period, to be commenced as early as January 2023. Pursuant to Proposition 218, any proposed increase cannot exceed the City's estimated reasonable cost of providing water service.

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## 7. ATTACHMENTS

- Rating Summation
- Professional Services Agreement

## **RATING SUMMATION FOR WATER & SANITATION RATES STUDY**

FIRM	Cost	Hours	Rater	Overview and Understanding of Project (15 pts)	Relevant of Experience (30 pts)	Description of work (25 pts)	Project Team (20 pts)	Schedule & Progress Activity (10pts)	Total (100 pts)	Rank
Raftelis	\$ 85,016.00	260	1	15	30	20	20	10	95	
Raftelis	\$ 05,010.00	200	2	15	30	20	19	10	98	
Raftelis			3	14	30	23	20	10	97	
Katolio							20	Total=	290	1
Black & Veatch	\$ 85,995.00	270	1	8	27	20	18	10	83	
Black & Veatch			2	13	30	23	18	10	94	
Black & Veatch			3	15	28	23	18	10	94	
								Total=	271	2
Stantec	Did not submit p	proposal due	e to limite	d time and resources						
Stantec										
Stantec										
Carollo Engineers	Did not submit p	proposal due	e to workl	oad						
Carollo Engineers										
Carollo Engineers										

#### PROFESSIONAL SERVICES AGREEMENT [Water and Sanitation Rate Study Services]

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made at Orange, California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and RAFTELIS FINANCIAL CONSULTANTS, INC., a North Carolina corporation ("Contractor"), who agree as follows:

1. <u>Services</u>. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to the reasonable satisfaction of City the services set forth in Exhibit "A," which is attached hereto and incorporated herein by reference. As a material inducement to City to enter into this Agreement, Contractor represents and warrants that it has thoroughly investigated and considered the scope of services and fully understands the difficulties and restrictions in performing the work. The services which are the subject of this Agreement are not in the usual course of City's business and City relies on Contractor's representation that it is independently engaged in the business of providing such services and is experienced in performing the work. Contractor shall perform all services in a manner reasonably satisfactory to City and in a manner in conformance with the standards of quality normally observed by an entity providing such services to a municipal agency. All services provided shall conform to all federal, state and local laws, rules and regulations and to the best professional standards and practices. The terms and conditions set forth in this Agreement shall control over any terms and conditions in Exhibit "A" to the contrary.

#### 2. <u>Compensation and Fees</u>.

**a.** Contractor's total compensation for all services performed under this Agreement, shall not exceed EIGHTY-FIVE THOUSAND SIXTEEN DOLLARS and 00/100 (\$85,016.00) without the prior written authorization of City.

**b.** The above compensation shall include all costs, including, but not limited to, all clerical, administrative, overhead, insurance, reproduction, telephone, travel, auto rental, subsistence and all related expenses.

#### 3. <u>Payment</u>.

**a.** As scheduled services are completed, Contractor shall submit to City an invoice for the services completed, authorized expenses and authorized extra work actually performed or incurred.

**b.** All such invoices shall state the basis for the amount invoiced, including services completed, the number of hours spent and any extra work performed.

**c.** City will pay Contractor the amount invoiced within thirty (30) days after the approval of the invoice.

**d.** Payment shall constitute payment in full for all services, authorized costs and authorized extra work covered by that invoice.

4. <u>Change Orders</u>. No payment for extra services caused by a change in the scope or complexity of work, or for any other reason, shall be made unless and until such extra services and a price therefor have been previously authorized in writing and approved by City as an amendment to this Agreement. City's Project Manager is authorized to approve a reduction in the services to be performed and compensation therefor. All amendments shall set forth the changes of work, extension of time, and/or adjustment of the compensation to be paid by City to Contractor and shall be signed by the City's Project Manager, City Manager or City Council, as applicable.

5. <u>Licenses</u>. Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the work contemplated by this Agreement and that Contractor and its subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Agreement.

6. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Agreement. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that it and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

7. <u>Contractor Not Agent</u>. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind City to any obligation whatsoever.

8. <u>Designated Persons</u>. Only those qualified persons authorized by City's Project Manager, or as designated in Exhibit "A," shall perform work provided for under this Agreement. It is understood by the parties that clerical and other nonprofessional work may be performed by persons other than those designated.

**9.** <u>Assignment or Subcontracting</u>. No assignment or subcontracting by Contractor of any part of this Agreement or of funds to be received under this Agreement shall be of any force or effect unless the assignment has the prior written approval of City. City may terminate this

Agreement rather than accept any proposed assignment or subcontracting. Such assignment or subcontracting may be approved by the City Manager or his/her designee.

10. <u>Time of Completion</u>. Except as otherwise specified in Exhibit "A," Contractor shall commence the work provided for in this Agreement within five (5) days of the Effective Date of this Agreement and diligently prosecute completion of the work in accordance with the time period set forth in Exhibit "A" hereto or as otherwise agreed to by and between the representatives of the parties.

**11.** <u>**Time Is of the Essence**</u>. Time is of the essence in this Agreement. Contractor shall do all things necessary and incidental to the prosecution of Contractor's work.

#### 12. <u>Reserved</u>.

13. <u>Delays and Extensions of Time.</u> Contractor's sole remedy for delays outside its control, other than those delays caused by City, shall be an extension of time. No matter what the cause of the delay, Contractor must document any delay and request an extension of time in writing at the time of the delay to the satisfaction of City. Any extensions granted shall be limited to the length of the delay outside Contractor's control. If Contractor believes that delays caused by City will cause it to incur additional costs, it must specify, in writing, why the delay has caused additional costs to be incurred and the exact amount of such cost at the time the delay occurs. No additional costs can be paid that exceed the not to exceed amount stated in Section 2.a, above, absent a written amendment to this Agreement.

14. <u>Products of Contractor</u>. The documents, studies, evaluations, assessments, reports, plans, citations, materials, manuals, technical data, logs, files, designs and other products produced or provided by Contractor for this Agreement shall become the property of City upon receipt. Contractor shall deliver all such products to City prior to payment for same. City may use, reuse or otherwise utilize such products without restriction.

**15.** <u>Equal Employment Opportunity</u>. During the performance of this Agreement, Contractor agrees as follows:

**a.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

**b.** Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration

for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

**c.** Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

16. <u>Conflicts of Interest</u>. Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a consultant to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code.

#### 17. <u>Indemnity</u>.

**a.** To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold City, its City Council and each member thereof, and the officers, officials, agents and employees of City (collectively the "Indemnitees") entirely harmless from all liability arising out of:

(1) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or Contractor's subcontractor's employees arising out of Contractor's work under this Agreement, including any and all claims under any law pertaining to Contractor or its employees' status as an independent contractor and any and all claims under Labor Code section 1720 related to the payment of prevailing wages for public works projects; and

(2) Any claim, loss, injury to or death of persons or damage to property caused by any act, neglect, default, or omission other than a professional act or omission of Contractor, or person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, or any of them, arising out of, or in any way connected with the work or services which are the subject of this Agreement, including injury or damage either on or off City's property; but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of City. Contractor, at its own expense, cost and risk, shall indemnify any and all claims, actions, suits or other proceedings that may be brought or instituted against the Indemnitees on any such claim or liability covered by this subparagraph, and shall pay or satisfy any judgment that may be rendered against the Indemnitees, or any of them, in any action, suit or other proceedings as a result of coverage under this subparagraph.

**b.** To the fullest extent permitted by law, and as limited by California Civil Code 2782.8, Contractor agrees to indemnify and hold Indemnitees harmless from all liability arising out of any claim, loss, injury to or death of persons or damage to property to the extent caused by its negligent professional act or omission in the performance of professional services pursuant to this Agreement.

**c.** Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

**d.** The indemnities set forth in this section shall survive any closing, rescission, or termination of this Agreement, and shall continue to be binding and in full force and effect in perpetuity with respect to Contractor and its successors.

#### 18. <u>Insurance</u>.

**a.** Contractor shall carry workers' compensation insurance as required by law for the protection of its employees during the progress of the work. Contractor understands that it is an independent contractor and not entitled to any workers' compensation benefits under any City program.

**b.** Contractor shall maintain during the life of this Agreement the following minimum amount of comprehensive general liability insurance or commercial general liability insurance: the greater of (1) One Million Dollars (\$1,000,000) per occurrence; or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage and be written on an occurrence basis.

**c.** Contractor shall maintain during the life of this Agreement, the following minimum amount of automotive liability insurance: the greater of (1) a combined single limit of One Million Dollars (\$1,000,000); or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage for all owned, non-owned and hired vehicles and be written on an occurrence basis.

**d.** Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor under this Agreement.

e. Each policy of general liability and automotive liability shall provide that City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Contractor under this Agreement. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 18.b and c, above, shall apply to City as an additional insured. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth herein shall be maintained for the duration of the Agreement.

**f**. Contractor shall maintain during the life of this Agreement professional liability insurance covering errors and omissions arising out of the performance of this Agreement with a minimum limit of One Million Dollars (\$1,000,000) per claim. Contractor agrees to keep

such policy in force and effect for at least five (5) years from the date of completion of this Agreement.

**g.** The insurance policies maintained by Contractor shall be primary insurance and no insurance held or owned by City shall be called upon to cover any loss under the policy. Contractor will determine its own needs in procurement of insurance to cover liabilities other than as stated above.

**h.** Before Contractor performs any work or prepares or delivers any materials, Contractor shall furnish certificates of insurance and endorsements, as required by City, evidencing the aforementioned minimum insurance coverages on forms acceptable to City, which shall provide that the insurance in force will not be canceled or allowed to lapse without at least ten (10) days' prior written notice to City.

**i.** Except for professional liability insurance coverage that may be required by this Agreement, all insurance maintained by Contractor shall be issued by companies admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide. In the case of professional liability insurance coverage, such coverage shall be issued by companies either licensed or admitted to conduct business in California so long as such insurer possesses the aforementioned Best rating.

**j** Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Agreement unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom, by way of set-off from any sums owed Contractor.

**k.** Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance.

**I.** Contractor shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to City for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**19.** <u>**Termination**</u>. City may for any reason terminate this Agreement by giving Contractor not less than five (5) days' written notice of intent to terminate. Upon receipt of such notice, Contractor shall immediately cease work, unless the notice from City provides otherwise. Upon the termination of this Agreement, City shall pay Contractor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with

this Agreement, unless termination by City shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

20. <u>Maintenance and Inspection of Records</u>. In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Agreement. City and its authorized representatives shall have access to and the right to audit and reproduce any of Contractor's records regarding the services provided under this Agreement. Contractor shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Contractor agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

#### 21. <u>Compliance with all Laws/Immigration Laws</u>.

**a.** Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement.

**b.** If the work provided for in this Agreement constitutes a "public works," as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid, to the extent Contractor's employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that it, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations (<u>www.dir.ca.gov/DLSR</u>). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

**c.** Contractor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Agreement comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Agreement who is ineligible to work in the United States or under the terms of this Agreement; and

(3) Has properly maintained, and shall at all times during the term of this Agreement properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and

(4) Has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

**d.** Contractor shall require all subcontractors or subconsultants to make the same representations and warranties as set forth in Subsection 21.c.

e. Contractor shall, upon request of City, provide a list of all employees working under this Agreement and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Agreement without written notice to City, accompanied by the verification required herein for such employees.

**f.** Contractor shall require all subcontractors or sub-consultants to make the same verification as set forth in Subsection 21.e.

**g.** If Contractor or subcontractor knowingly employs an employee providing work under this Agreement who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee, that shall constitute a material breach of this Agreement and may be cause for immediate termination of this Agreement by City.

**h.** Contractor agrees to indemnify and hold City, its officers, officials, agents and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Agreement.

22. <u>Governing Law and Venue</u>. This Agreement shall be construed in accordance with and governed by the laws of the State of California and Contractor agrees to submit to the jurisdiction of California courts. Venue for any dispute arising under this Agreement shall be in Orange County, California.

**23.** <u>Integration</u>. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

24. <u>Notice</u>. Except as otherwise provided herein, all notices required under this Agreement shall be in writing and delivered personally, by e-mail, or by first class U.S. mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

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#### "CONTRACTOR"

Raftelis Financial Consultants, Inc. 445 S. Figueroa Street, Suite 1925 Los Angeles, CA 90071 Attn.: Steve Gagnon

Telephone: 213-262-9308 E-Mail: sgagnon@raftelis.com "CITY"

City of Orange 300 E. Chapman Avenue Orange, CA 92866-1591 Attn.: Sonny Tran

Telephone: 714-288-2497 E-Mail: stran@cityoforange.org

Counterparts. This Agreement may be executed in one or more counterparts, each 25. of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

**IN WITNESS** of this Agreement, the parties have entered into this Agreement as of the year and day first above written.

9

#### **"CONTRACTOR"**

RAFTELIS FINANCIAL CONSULTANTS, INC., a North Carolina corporation

\*By: Printed Name:\_\_\_\_\_ Title:

\*By:\_\_\_\_\_ Printed Name:\_\_\_\_\_

Title:

ATTEST:

Pamela Coleman, City Clerk

\*NOTE: City requires the following signature(s) on behalf of the Contractor:

- -- (1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR
- The corporate officer named in a corporate -resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to City.

APPROVED AS TO FORM:

Mary E. Binning Senior Assistant City Attorney

#### "CITY"

CITY OF ORANGE, a municipal corporation

By: <u>Mark A. Murphy, Mayor</u>

#### EXHIBIT "A"

## **SCOPE OF SERVICES**

[Beneath this sheet.]

2

# **Description of Work**

Please note, since our Project Manager is local, we assumed that he will attend staff and City Council meetings in person.

# Task 1: Project Initiation, Management, and Quality Assurance/Quality Control

A kick-off meeting identifies the goals, concerns, and project schedule. The goals for the kick-off meeting include:

- Acquainting City staff with our project team
- Establishing goals and objectives
- Finalizing the work plan and schedule
- Discussing the pricing objectives, including equity, affordability, and revenue stability, among others
- Discussing the data request and any additional data requirements

Prior to the kick-off meeting, we will prepare a detailed data request that identifies the information needed. If possible, Raftelis will review the initial data before the kick-off meeting and will come prepared with our questions to get the most out of the meeting.

This task also includes hours for project management including client correspondence, progress updates, timely billing, and internal management of Raftelis staff.

Lastly, this task also includes time for quality assurance/quality control. To ensure robust quality control, the Project Manager and Assistant Project Manager will review the model and results to ensure they are based on sound rate-making principles.

PLANNED MEETINGS:

• One on-site kick-off meeting with City staff

DELIVERABLES:

- Kick-off meeting agenda materials
- Meeting minutes
- Data request list
- Results of the pricing objectives exercise



#### **OPTIMIZING CAPITAL SPENDING**

Revenue requirements are only as good as the operating and capital spending needs and assumptions that go into them. If there is uncertainty in operating or capital spending needs, then revenue requirements, cost of service, and the associated rates being requested may be too high or too low. If your utility is concerned with capital spending needs and would like a third-party review of your needs and/or assumptions, Raftelis' subject matter experts in capital project development and delivery are here to help. Likewise, if your utility is interested in opportunities to take advantage of the new Integrated Planning Law added to the Clean Water Act in 2019, Raftelis can help. Contact us to discuss these value-added services, which can be provided under an optional task or a separate scope of work.

#### **Task 2: Water and Wastewater Financial Plan**

We will develop a financial plan for the water and wastewater enterprise. We will use the prior models as a starting point and add or delete any desired or unused features to make them "clean" and easy to follow. Therefore, staff will already be familiar with the models. The financial plans will assess each enterprise's current financial status and suggest revenue adjustments to ensure long-term fiscal sustainability. Raftelis will project expenses and revenue requirements over a 10year planning horizon. Projecting revenue adjustments over a 10-year planning horizon illustrates future rate impacts and potential challenges to each enterprise's financial health so the City can plan expenses, reserve balances, or capital project scheduling to smooth rate impacts. We will project revenue requirements based on the current budget, the City's longterm capital funding strategy, and existing debt service (if applicable).

Raftelis understands the importance of developing a user-friendly, flexible model that the City can use for future financial planning such as inputting actual expenses and assessing the impact on rates. Raftelis builds each client's model from the ground up, carefully tailored to individual needs and preferences. Once completed, the model will serve as a comprehensive, yet flexible, planning tool that will incorporate the City's operating budget, forecasted demand projections, capital financing plan, revenue requirements, revenue projections, reserve balances, and customer impacts.

The dashboard is the graphical interface that displays the model's results in an easily understandable format. As shown on the following page, the dashboard contains several features, including the ability to show or indicate:

- Revenue adjustments required for the study period to meet debt coverage and target reserve balance(s)
- Projected operating costs and revenue streams (shown in the Water Operating Financial Plan chart)
- Different capital funding sources (shown in the CIP and Funding Sources for Water Funds chart)
- Reserve balances and target levels according to City policies (shown in the Projected Ending Fund Balances) with flagging features when projected balances fall below target levels

It is an easy-to-understand format that shows the impacts of various assumptions so that decisions regarding revenue adjustments, capital financing through pay-go or debt, and reserve balances can be made quickly and efficiently. Upon the completion of the financial plan model, Raftelis will hold two web-based workshops with City staff to review the model and the assumptions for appropriateness and finalize the financial plans for the City's water and wastewater enterprises to be used for the rate design model.

PLANNED MEETINGS:

• Two web-based meetings with City staff as needed to discuss the financial plan

#### DELIVERABLES:

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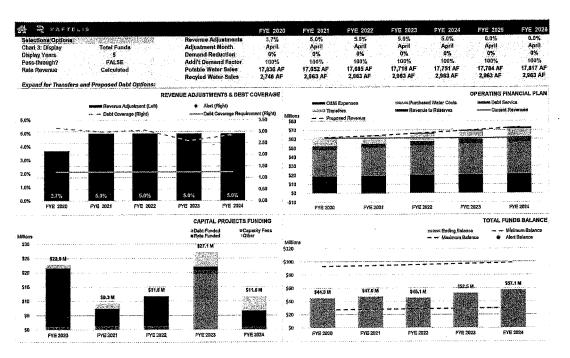
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- Presentation materials in PowerPoint
- Draft financial plan model in Excel

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Raftelis will develop a customized financial model that incorporates a dashboard to allow you to easily run scenarios and see the impacts in real time. Shown here is a sample dashboard that we developed for another project.

## **Task 3: Water and Wastewater Cost-of-service Analysis**

The cost-of-service study provides rate defensibility in light of Proposition 218 and determines the total cost to serve each customer class. For water, the cost-of-service analysis will follow industry standards provided in AWWA's *Manual M1*, *Principles of Water Rates, Fees and Charges, 7th Edition*. Our cost-of-service methodology includes three steps:

- Step 1: Review Customer Class Usage Patterns and Determine Customer Classifications Raftelis will review historical water consumption to assess class water use patterns. Using this data, we will determine peaking characteristics for each customer class and tier and discern whether new classes may be warranted.
- Step 2: Allocate Costs to Cost Components Raftelis will functionalize costs into water service functions such as supply, transmission and distribution, storage, and customer service. We will then allocate these functions to cost components such as water supply, base demand, capacity (demand), customer service, and more. From here, we will determine the unit cost for each cost component.
- Step 3: Distribute Costs to Customer Classes Next, we will distribute costs to the customer classes using the unit costs developed in Step 2. This results in the cost to serve each class, which is based on how each class uses water.

#### Wastewater

For the wastewater rate study cost-of-service analysis, Raftelis will use methodologies set forth by WEF in their *Manual of Practice No.27, Financing and Charges for Wastewater Systems*, which was co-authored by Sudhir Pardiwala. The City provides wastewater collection services and sends its wastewater to OCSD for treatment. Treatment costs are collected via property taxes.

PLANNED MEETINGS:

None

DELIVERABLES:

• Cost-of-service analyses in Excel

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# Task 4: Water and Wastewater Rate Development and Customer Bill Impacts

#### Water

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Raftelis performed the prior water (and sanitation) rate study. The City has a tiered rate for SFR and MFR customers and a uniform rate for all other classes. We will discuss if there is a desire for rate structure changes such as adjusting the tier breakpoints or adjusting the amount of fixed revenue collected, and we will update the current rates. We will review the bill impacts of different fixed/volumetric rate structures with City staff to select the appropriate structure.

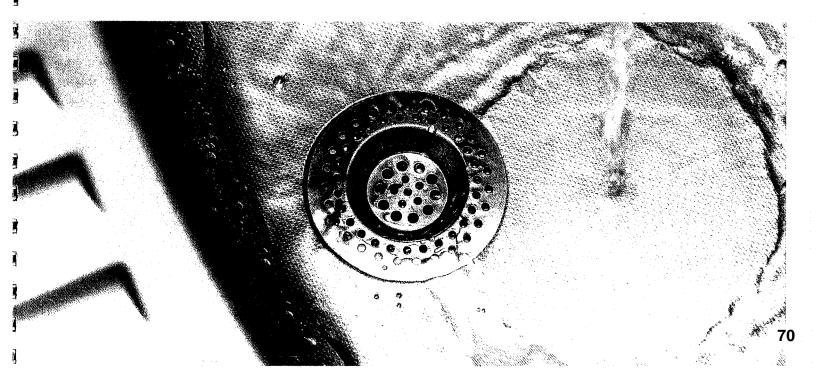
Our model has the flexibility to instantaneously change tier widths and evaluate different fixed/variable revenue structures to enhance revenue stability. To communicate the cost nexus for tiered rates, the water rates have several cost components for each tier, as shown in the table below, including, but not limited to, water supply costs, delivery costs, peaking costs, conservation costs, and revenue offsets, which lower the rates.

#### Derivation of Volumetric Rates by Cost Components

Residential	Water Supply	Delivery	Peaking	Conservation	Pass-Thru	Proposed FY 2017
Tier I	\$3.11	\$0.83	\$0:16	\$0.03	\$0.11	\$4.22
TierI	\$3.11	\$0.83	\$0.47	\$0.03	\$0.11	\$4.51
Tier III	\$3.11	\$0.83	\$0.86	\$0.03	\$0.11	\$4.81

#### Wastewater

The City operates a sewage collection system and sends sewage to OCSD for treatment. It currently has a fixed charge for operations and maintenance for SFR and MFR customers. It also has a fixed capital charge for SFR and MFR customers. Commercial customers are charged a volumetric rate. We will calculate the cost to serve each class, which is a function of the winter water use of each class as winter water use is more reflective of water discharged to the sewer system.



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Example Single-Family Bill Impacts:

Illustrating impacts on customers resulting from the adoption of the proposed rates

Single Family Bill Impacts

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## **Customer Bill Impacts**

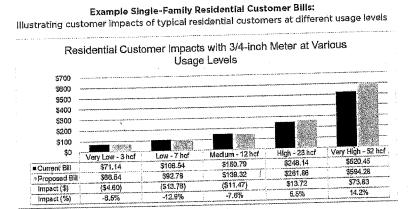
We will analyze the bill impacts as a result of the new rates. If the rate structure is identical, then this task is straight forward. If we revise the rate structure, then we will clearly show who will be impacted and by how much. The model will include a summary of customer bill impacts resulting from the proposed rate structure. Using water as an example, the figures to the right show SFR bill impacts at various use levels. The model will have the ability to select a particular meter size to see how bills are affected at different usage levels.

#### PLANNED MEETINGS:

• One in-person meeting with City Staff to discuss draft results

#### DELIVERABLES:

 Draft water and wastewater rate models in Excel



## Task 5: City Council

## Presentation

From our prior experience with the City, we understand that it is preferred that City staff present to the City Council. Raftelis will attend the meeting in support of City staff and to answer questions as needed. We can also present if desired. We can prepare a draft presentation for City staff and incorporate staff suggestions.

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The presentations usually discuss the recommended reserve and fund levels, proposed long-term financial plan, and the proposed rate structure and rates along with the resulting customer impact analysis, if necessary. The goal of this first City Council meeting is to get approval to proceed with the Proposition 218 public hearing and notice.

#### PLANNED MEETINGS:

One on-site City Council presentation

#### DELIVERABLES:

PowerPoint presentation

## **Task 6: Draft and Final Report Development**

The process for developing the proposed rates will be described in a draft water and wastewater rate study report. It is imperative that the report clearly show the nexus between the proposed charges for service and the cost to provide said service. This draft report will include an executive summary highlighting the major issues and decisions and an overview of operations, the capital improvement plan, the financial plan, and the final rates. We will fully derive the rates from the revenue requirement to the final fixed and volumetric rates by tier and class.

Comments from City staff will be incorporated into the final report. The final report will be submitted to the City and will include appropriate supporting data from the model to address the requirements of Proposition 218.

PLANNED MEETINGS:

• One webinar with City staff to discuss reports

#### DELIVERABLES:

- Draft report in Word format
- Final report in Word and PDF format

#### **Task 7: Proposition 218 Public Hearing**

Raftelis will prepare a Proposition 218 Public Hearing presentation, and support staff will present the rate studies at a Proposition 218 Public Hearing. We can also present the results if desired. Raftelis has presented at hundreds of public hearings and, therefore, has experience with typical concerns raised by the public. We have cost-of-service experts that can explain the rate derivation that is needed in this post-San Juan Capistrano rate-setting environment. We will incorporate feedback from the City Council presentation in Task 5. The presentation will tell our rate-setting basis and justify the need for rate adjustments. Prior to the Public Hearing, Raftelis will conduct one webinar with City staff to review the presentation materials.

#### PLANNED MEETINGS:

- One webinar to discuss the presentation materials with City staff
- One in-person Proposition 218 Public Hearing

#### DELIVERABLES:

• PowerPoint presentation for Proposition 218 Public Hearing





# Agenda Item

City Council

ltem #: 3.6	6. 11/9/2021	File #: 21-0568
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Will Kolbow, Assistant City Manager/Administrative Servi	ces Director

## 1. SUBJECT

Agreement with Chandler Asset Management, Inc. for Investment Services for the City for Fiscal Years 2021-2022 through 2023-2024.

### 2. SUMMARY

A Request for Proposal (RFP) for Investment Services resulted in proposals from two firms. A panel reviewed the proposals and interviewed two of the firms. Based on the proposals submitted, the interviews, and the reference checks, Chandler Asset Management, Inc. was the top candidate.

#### 3. **RECOMMENDED ACTION**

- 1. Approve the three-year agreement, commencing November 15, 2021, with two optional oneyear extensions, with Chandler Asset Management, Inc. in the total amount of \$270,000 (\$90,000 per year); and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the appropriation of \$60,000 from the General Fund unreserved fund balance (for fiscal year 2021-2022) to expenditure account number 100.1201.51670.0000.

## 4. FISCAL IMPACT

The total expenditure for this three-year agreement is \$270,000 and will be funded through General Fund (100).

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

- a: Expend fiscal resources responsibly.
- d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

With the upcoming retirement of the City's Investment/Revenue Officer, the Finance Department is now in the process of restructuring job duties. The decision has been made to outsource the City's investment management to an outside professional firm, as this is the trend for many other jurisdictions. In October, staff prepared and distributed RFP 21-22.17 for Investment Services.

Two proposals were received, and both firms met our criteria to interview: Chandler Asset Management, Inc. and PFM Asset Management, LLC. The interview panel included the City Treasurer, Assistant City Manager, Assistant Finance Director, Budget Manager, and

Item #: 3.6.

Investment/Revenue Officer. After reviewing the qualifications and pricing proposals of each of the two firms, the panel is recommending Chandler Asset Management, Inc. to provide investment services to the City for the fiscal years ending in June 30, 2022, 2023 and 2024. We agendized our recommendation at the November 3, 2021 Investment Advisory Committee (IAC) meeting for review. Chandler Asset Management, Inc. presented their investment firm to the IAC members, who were in full support of having them manage the City's investments.

The agreement includes the cost of properly providing investment services of the City, including: managing the City's investment portfolio; assistance in developing and implementing investment strategies within the parameters of the City's Investment Policy; portfolio compliance; providing investment reports, including monthly statements, quarterly investment reports, and annual portfolio performance report; maintaining relationships with the broker/dealer community; monitoring market conditions and recommend changes to policies and strategies; reviewing the City's Investment Policy and provide recommendations; attending Investment Advisory Committees every quarter and City Council meetings as necessary, and; serving as a general resource for City staff. The agreement also includes an option for the City Manager, at the recommendation of the Assistant City Manager, to extend the agreement for two additional terms of one year each.

Chandler Asset Management, Inc. is a California firm that has specialized in focusing on the management of high-quality fixed income portfolios for the public sector. Their main office is located in San Diego. Their firm has extensive experience in investment services for local governmental agencies, and they have experience working with like-sized cities comparable to Orange. Their references are excellent and their fees are reasonable for the services provided.

#### 7. ATTACHMENTS

- Professional Services Agreement
- Chandler Presentation to City of Orange Investment Advisory Committee



# Agenda Item

City Council

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#### PROFESSIONAL SERVICES AGREEMENT [Investment Services]

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made at Orange, California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and CHANDLER ASSET MANAGEMENT, INC., a California corporation ("Contractor"), who agree as follows:

1. <u>Services</u>. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to the reasonable satisfaction of City the services set forth in Exhibit "A," which is attached hereto and incorporated herein by reference. As a material inducement to City to enter into this Agreement, Contractor represents and warrants that it has thoroughly investigated and considered the scope of services and fully understands the difficulties and restrictions in performing the work. The services which are the subject of this Agreement are not in the usual course of City's business and City relies on Contractor's representation that it is independently engaged in the business of providing such services and is experienced in performing the work. Contractor shall perform all services in a manner reasonably satisfactory to City and in a manner in conformance with the standards of quality normally observed by an entity provided such services to a municipal agency. All services provided shall conform to all federal, state and local laws, rules and regulations and to the best professional standards and practices. The terms and conditions set forth in this Agreement shall control over any terms and conditions in Exhibit "A" to the contrary.

#### 2. <u>Compensation and Fees</u>.

**a.** Contractor's total compensation for all services performed under this Agreement, shall be as set forth in Exhibit "B," which is attached hereto and incorporated herein by reference.

**b.** The above compensation shall include all costs, including, but not limited to, all clerical, administrative, overhead, insurance, reproduction, telephone, travel, auto rental, subsistence and all related expenses.

#### 2.1 <u>Term and Extension(s)</u>

a. The Initial Term of this Agreement is three (3) years (the "Initial Term"), commencing November 15, 2021 and expiring on November 14, 2024 (the "Expiration Date"); provided, however, that City has the right to extend the term of this Agreement for the following extensions and upon the following terms:

- First Extension (the "First Extension Term") commencing November 15, 2024, and terminating November 14, 2025, in an annual amount as set forth in Exhibit "B;"
- Second Extension (the "Second Extension Term") commencing November 15, 2025, and terminating November 14, 2026, in an annual amount as set forth in Exhibit "B."

b. The City Manager is hereby authorized on behalf of City to give written notice to Contractor of City's intention to exercise each Extension (if at all) no later than thirty (30) days prior to the Expiration Date of the then-current term; provided, however, that City's notice of its intention to extend the term of this Agreement for each Extension shall be expressly conditioned upon and subject to the approval by the City Council, in its sole and absolute discretion, of an amount sufficient to pay the compensation set forth herein for each Extension as part of its annual budget approval process prior to the beginning of each Extension. While the parties acknowledge that City is required to give its notice of intention to extend the term of this Agreement not later than thirty (30) days prior to the Expiration Date of then-current term, it is possible that the City Council's approval of its annual budget and appropriation of funds for the Extension in question may occur thereafter. Accordingly, if the City Council fails to approve and appropriate funds sufficient to pay the amount of compensation set forth herein for an Extension, this Agreement shall terminate and be of no further force and effect as of the expiration of the then-current term. Notwithstanding anything in this provision to the contrary, in the event City gives Contractor written notice exercising an Extension and City receives notice that appropriation of funds for the Extension in question are not available after Contractor has performed services under the Extension, City agrees that Contractor will be equitably compensated for all services performed under any portion of an Extension through the date of termination of the Agreement. Except as specifically set forth herein, the terms and conditions of each Extension will be the same as the Initial Agreement.

**c.** Any Extension, if properly exercised, shall be memorialized in the form of an amendment to this Agreement. The City Manager is hereby authorized to approve and execute amendments to this Agreement reflecting the exercise of each Extension and the amount of compensation (including the amount of funds to be made available for additional work or services) payable to Contractor for each respective Extension.

#### 3. <u>Payment</u>.

**a.** Fees shall be paid as set forth in Exhibit "B."

**b.** Payment shall constitute payment in full for all services, authorized costs and authorized extra work covered by that time period.

4. <u>Change Orders</u>. No payment for extra services caused by a change in the scope or complexity of work, or for any other reason, shall be made unless and until such extra services and a price therefor have been previously authorized in writing and approved by City as an amendment to this Agreement. All amendments shall set forth the changes of work, extension of time, and/or adjustment of the compensation to be paid by City to Contractor and shall be signed by the City Manager or City Council, as applicable.

5. <u>Licenses</u>. Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the work contemplated by this Agreement and that Contractor and its subcontractors shall maintain all

appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Agreement.

Independent Contractor. At all times during the term of this Agreement, 6. Contractor shall be an independent contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Agreement. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that it and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

7. <u>Contractor Not Agent</u>. Except as provided in Exhibit "A" or as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

8. <u>Designated Persons</u>. Only those qualified persons authorized by City, or as designated in Exhibit "A," shall perform work provided for under this Agreement. It is understood by the parties that clerical and other nonprofessional work may be performed by persons other than those designated.

9. <u>Assignment or Subcontracting</u>. No assignment or subcontracting by Contractor of any part of this Agreement or of funds to be received under this Agreement shall be of any force or effect unless the assignment has the prior written approval of City. City may terminate this Agreement rather than accept any proposed assignment or subcontracting. Such assignment or subcontracting may be approved by the City Manager or his/her designee.

**10.** <u>**Time of Completion**</u>. Except as otherwise specified in Exhibit "A," Contractor shall commence the work provided for in this Agreement within five (5) days of the Effective Date of this Agreement and diligently prosecute completion of the work in accordance with the time period set forth in Exhibit "A" or as otherwise agreed to by the representatives of the parties.

**11.** <u>**Time Is of the Essence**</u>. Time is of the essence in this Agreement. Contractor shall do all things necessary and incidental to the prosecution of Contractor's work.

#### 12. <u>Reserved</u>.

**13.** <u>**Delays and Extensions of Time.**</u> Contractor's sole remedy for delays outside its control, other than those delays caused by City, shall be an extension of time. No matter what the

cause of the delay, Contractor must document any delay and request an extension of time in writing at the time of the delay to the satisfaction of City. Any extensions granted shall be limited to the length of the delay outside Contractor's control. If Contractor believes that delays caused by City will cause it to incur additional costs, it must specify, in writing, why the delay has caused additional costs to be incurred and the exact amount of such cost at the time the delay occurs. No additional costs can be paid that exceed the not to exceed amount referenced in Section 2.a, above, absent a written amendment to this Agreement.

14. <u>Products of Contractor</u>. The documents, studies, evaluations, assessments, reports, plans, citations, materials, manuals, technical data, logs, files, designs and other products produced or provided by Contractor for this Agreement shall become the property of City upon receipt. Contractor shall deliver all such products to City prior to payment for same. City may use, reuse or otherwise utilize such products without restriction.

**15.** <u>Equal Employment Opportunity</u>. During the performance of this Agreement, Contractor agrees as follows:

**a.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

**b.** Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

**c.** Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

16. <u>Conflicts of Interest</u>. Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a consultant to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code.

#### 17. <u>Indemnity</u>.

**a.** To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold City, its City Council and each member thereof, and the officers, officials, agents

and employees of City (collectively the "Indemnitees") entirely harmless from all liability arising out of:

(1) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or its subcontractor's employees arising out of Contractor's work under this Agreement, including any and all claims under any law pertaining to Contractor or its employees' status as an independent contractor and any and all claims under Labor Code section 1720 related to the payment of prevailing wages for public works projects; and

(2) Any claim, loss, injury to or death of persons or damage to property caused by any act, neglect, default, or omission other than a professional act or omission of Contractor, or person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, or any of them, arising out of, or in any way connected with the work or services which are the subject of this Agreement, including injury or damage either on or off City's property; but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of City. Contractor, at its own expense, cost and risk, shall indemnify any and all claims, actions, suits or other proceedings that may be brought or instituted against the Indemnitees on any such claim or liability covered by this subparagraph, and shall pay or satisfy any judgment that may be rendered against the Indemnitees, or any of them, in any action, suit or other proceedings as a result of coverage under this subparagraph.

**b.** To the fullest extent permitted by law, and as limited by California Civil Code 2782.8, Contractor agrees to indemnify and hold Indemnitees harmless from all liability arising out of any claim, loss, injury to or death of persons or damage to property to the extent caused by its negligent professional act or omission in the performance of professional services pursuant to this Agreement.

**c.** Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

**d.** The indemnities set forth in this section shall survive any closing, rescission, or termination of this Agreement, and shall continue to be binding and in full force and effect in perpetuity with respect to Contractor and its successors.

#### 18. <u>Insurance</u>.

**a.** Contractor shall carry workers' compensation insurance as required by law for the protection of its employees during the progress of the work. Contractor understands that it is an independent contractor and not entitled to any workers' compensation benefits under any City program.

**b.** Contractor shall maintain during the life of this Agreement the following minimum amount of comprehensive general liability insurance or commercial general liability

insurance: the greater of (1) One Million Dollars (\$1,000,000) per occurrence; or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage and be written on an occurrence basis.

**c.** Contractor shall maintain during the life of this Agreement, the following minimum amount of automotive liability insurance: the greater of (1) a combined single limit of One Million Dollars (\$1,000,000); or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage for all owned, non-owned and hired vehicles and be written on an occurrence basis.

**d.** Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor under this Agreement.

e. Each policy of general liability and automotive liability shall provide that City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Contractor under this Agreement. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 18.b and c, above, shall apply to City as an additional insured. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth herein shall be maintained for the duration of the Agreement.

**f**. Contractor shall maintain during the life of this Agreement professional liability insurance covering errors and omissions arising out of the performance of this Agreement with a minimum limit of One Million Dollars (\$1,000,000) per claim. Contractor agrees to keep such policy in force and effect for at least five (5) years from the date of completion of this Agreement.

**g.** The insurance policies maintained by Contractor shall be primary insurance and no insurance held or owned by City shall be called upon to cover any loss under the policy. Contractor will determine its own needs in procurement of insurance to cover liabilities other than as stated above.

**h.** Before Contractor performs any work or prepares or delivers any materials, Contractor shall furnish certificates of insurance and endorsements, as required by City, evidencing the aforementioned minimum insurance coverages on forms acceptable to City, which shall provide that the insurance in force will not be canceled or allowed to lapse without at least ten (10) days' prior written notice to City.

**i.** Except for professional liability insurance coverage, all insurance maintained by Contractor shall be issued by companies admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide. In the case of professional liability insurance

coverage, such coverage shall be issued by companies either licensed or admitted to conduct business in California so long as such insurer possesses the aforementioned Best rating.

**j** Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Agreement unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom, by way of set-off from any sums owed Contractor.

**k.** Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance.

**I.** Contractor shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to City for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**19.** <u>**Termination**</u>. City may for any reason terminate this Agreement by giving Contractor not less than five (5) days' written notice of intent to terminate. Upon receipt of such notice, Contractor shall immediately cease work, unless the notice from City provides otherwise. Upon the termination of this Agreement, City shall pay Contractor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Agreement, unless termination by City shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

20. <u>Maintenance and Inspection of Records</u>. In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Agreement. City and its authorized representatives shall have access to and the right to audit and reproduce any of Contractor's records regarding the services provided under this Agreement. Contractor shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Contractor agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

#### 21. <u>Compliance with all Laws/Immigration Laws</u>.

**a.** Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement.

**b.** If the work provided for in this Agreement constitutes a "public works," as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid, to the extent Contractor's employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that it, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations (www.dir.ca.gov/DLSR). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

**c.** Contractor represents and warrants that Contractor:

(1) Has complied and shall at all times during the term of this Agreement comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Agreement who is ineligible to work in the United States or under the terms of this Agreement; and

(3) Has properly maintained, and shall at all times during the term of this Agreement properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and

(4) Has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

**d.** Contractor shall require all subcontractors or subconsultants to make the same representations and warranties as set forth in Subsection 21.b.

e. Contractor shall, upon request of City, provide a list of all employees working under this Agreement and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Agreement without written notice to City, accompanied by the verification required herein for such employees.

**f.** Contractor shall require all subcontractors or sub-consultants to make the same verification as set forth in Subsection 21.d.

**g.** If Contractor or subcontractor knowingly employs an employee providing work under this Agreement who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee, that shall constitute a material breach of this Agreement and may be cause for immediate termination of this Agreement by City.

**h.** Contractor agrees to indemnify and hold City, its officers, officials, agents and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Agreement.

**22.** <u>Governing Law and Venue</u>. This Agreement shall be construed in accordance with and governed by the laws of the State of California and Contractor agrees to submit to the jurisdiction of California courts. Venue for any dispute arising under this Agreement shall be in Orange County, California.

**23.** <u>Integration</u>. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

24. <u>Notice</u>. Except as otherwise provided herein, all notices, reports and other communications required under this Agreement shall be in writing and delivered personally, by e-mail, by first class U.S. mail, postage prepaid, by confirmed facsimile or by overnight courier to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

#### "CONTRACTOR"

Chandler Asset Management, Inc. 6225 Lusk Boulevard San Diego, CA 92121 Attn.: Operations Department

#### "CITY"

City of Orange 300 E. Chapman Avenue Orange, CA 92866 Attn.: Assistant City Manager/Admin. Services Director

Telephone:858-546-3737Telephone:714-744-2222E-Mail:mcorral@chandlerasset.comE-Mail:wkolbow@cityoforange.org

**25.** <u>**Counterparts**</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

**IN WITNESS** of this Agreement, the parties have entered into this Agreement as of the year and day first above written.

"CONTRACTOR"

"CITY"

CHANDLER ASSET MANAGEMENT, INC., CITY OF ORANGE, a municipal corporation a California corporation

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

Nicole Dragoo, President

By: \_\_\_\_

Mark A. Murphy, Mayor

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

Martin Cassell, Chief Executive Officer

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning Senior Assistant City Attorney

\*<u>NOTE</u>: City requires the following signature(s) on behalf of the Contractor:

- -- (1) the Chairman of the Board, the President or a Vice-President, <u>AND</u> (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. <u>OR</u>
- -- The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to City.

#### EXHIBIT "A"

# SCOPE OF SERVICES

[Beneath this sheet.]

#### **GENERAL SERVICES**

Chandler Asset Management is pleased to continue to offer the **City of Orange** the following services:

- 1. Manage the City's investment portfolio pursuant to the specific, stated investment objectives. Place all orders for the purchase and sale of securities, communicate settlement information to the City's staff and coordinate security settlement. Execute all approved trades through competitive bidding processes when possible. The investment advisor will not provide custodial services or security safekeeping.
- 2. Provide assistance in developing and implementing an investment strategy that will maintain or enhance portfolio quality and performance within the parameters of the City's Investment Policy and cash flow needs.
- 3. Ensure the portfolio is in compliance with applicable laws and the City's Investment Policy including ordinances and resolutions relating to the investment of public funds.
- 4. Provide the City with investment reports that shall include, but not be limited to the following:
  - a. Monthly statements with all the information required by the California Government Code and Governmental Accounting Standards Board (GASB). These reports must include, but not limited to: detailed portfolio holdings including a complete description of the portfolio, the type of investments, the issuers, purchase price, accrued interest, amortized cost, market and book values, purchase date, maturity date, next upcoming potential call date, assigned security ratings by a nationally recognized statistical rating organization (NRSRA), principal and interest payments, effective earnings rate, yield to maturity, days to maturity, and portfolio summary statistics. These reports are required to be completed no later than the 20th of the month for the immediately preceding month for presentation to the Investment Advisory Committee and City Council at their meetings.
  - b. Quarterly investment reports including a description of market conditions, investment strategies employed, performance, and suggested changes to investment strategy.
  - c. Annual portfolio performance reports, based on the City's fiscal year, including, but not limited to: local and national economy, the City's portfolio holdings, performance objectives, and policy compliance.
- 5. Perform broker/dealer due diligence and maintain relations with the broker/dealer community.
- 6. Continually monitor market conditions and circumstances and report on any recommended changes to policies, strategies, and specific positions.
- 7. Annually, or more often if necessary, review the City's Investment Policy and provide recommended changes as needed per California Government Code or to incorporate best practices as provided by relevant statewide and national organizations. The City's Investment

Policy will be submitted to the Investment Advisory Committee and the City Council for approval on an annual basis.

- 8. Attend Investment Advisory Committee meeting every quarter to present investment performance and market conditions. Attend City Council meetings as necessary.
- 9. Serve as a general resource to the City's staff for information, advice, and training regarding fixed-income investments. Communicate as necessary with City staff to understand the City's investment operations.

#### TERMS SPECIFIC TO INVESTMENT MANAGEMENT RELATIONSHIP

- 1. <u>City Representative</u>. In its capacity as investment manager, Chandler shall receive all instructions, directions and other communications on City's behalf respecting City's account from City's Assistant City Manager/Administrative Services Director (Representative) or his/her designee. Chandler is hereby authorized to rely and act upon all such instructions, directions and communications from such Representative or any agent of such Representative.
- 2. <u>Investment Policy</u>. In investing and reinvesting City's assets, Chandler shall comply with City's Investment Policy dated June 8, 2021, or as it may be subsequently amended.
- 3. <u>Authority of Chandler</u>. Chandler is hereby granted full discretion to invest and reinvest all assets under its management in any type of security it deems appropriate, subject to the instructions given or guidelines set by Representative.
- 4. <u>Reserved</u>.
- 5. <u>Electronic Delivery</u>. From time to time, Chandler may be required to deliver certain documents to City such as account information, notices and required disclosures. City hereby consents to Chandler's use of electronic means, such as email, to make such delivery. This delivery may include notification of the availability of such document(s) on a website, and City agrees that such notification will constitute "delivery". City further agrees to provide Chandler with City's email address(s) and to keep this information current at all times by promptly notifying Chandler of any change in email address(s).

City email address(s): <a href="http://wkolbow@cityoforange.org">wkolbow@cityoforange.org</a>

- 6. <u>Proxy Voting</u>. Chandler will vote proxies on behalf of City unless otherwise instructed. Chandler has adopted and implemented written policies and procedures and will provide City with a description of the proxy voting procedures upon request. Chandler will provide information regarding how City's proxies were voted upon request. To request proxy policies or other information, please contact us by mail at the address provided, by calling 800-317-4747 or by emailing your request to info@chandlerasset.com.
- 7. <u>Custody of Securities and Funds</u>. Chandler shall not have custody or possession of the funds or securities that City has placed under its management. City shall appoint a custodian to take

and have possession of its assets. City recognizes the importance of comparing statements received from the appointed custodian to statements received from Chandler. City recognizes that the fees expressed above do not include fees City will incur for custodial services.

- 8. <u>Valuation</u>. Chandler will value securities held in portfolios managed by Chandler no less than monthly. Securities or investments in the portfolio will be valued in a manner determined in good faith by Chandler to reflect fair market value.
- 9. <u>Investment Advice</u>. City recognizes that the opinions, recommendations and actions of Chandler will be based on information deemed by it to be reliable, but not guaranteed to or by it. Provided that Chandler acts in good faith, City agrees that Chandler will not in any way be liable for any error in judgment or for any act or omission, except as may otherwise be provided for under the Federal Securities laws or other applicable laws.
- 10. <u>Payment of Commissions</u>. Chandler may place buy and sell orders with or through such brokers or dealers as it may select. It is the policy and practice of Chandler to strive for the best price and execution and for commission and discounts which are competitive in relation to the value of the transaction and which comply with Section 28(e) of the Securities and Exchange Act. Nevertheless, it is understood that Chandler may pay a commission on transactions in excess of the amount another broker or dealer may charge, and that Chandler makes no warranty or representation regarding commissions paid on transactions hereunder.
- 11. <u>Other Clients</u>. It is further understood that Chandler may be acting in a similar capacity for other institutional and individual clients, and that investments and reinvestments for City's portfolio may differ from those made or recommended with respect to other accounts and clients even though the investment objectives may be the same or similar. Accordingly, it is agreed that Chandler will have no obligation to purchase or sell for City's account any securities which it may purchase or sell for other clients.
- 12. <u>Confidential Relationship</u>. The terms and conditions of this Agreement, and all information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except (i) as required by law, rule, or regulation, (ii) as requested by a regulatory authority, (iii) for disclosures by either party of information that has become public by means other than wrongful conduct by such party or its officers, employees, or other personnel, (iv) for disclosures by either party to its legal counsel, accountants, or other professional advisers, (v) as necessary for Chandler to carry out its responsibilities hereunder, or (vi) as otherwise expressly agreed by the parties.
- 13. <u>Receipt of Brochure and Privacy Policy</u>. City has received the disclosure statement or "brochure" and "brochure supplement" also known as Part 2A and Part 2B of Form ADV, required to be delivered pursuant to Rule 204-3 of the Investment Advisers Act of 1940 (Brochure). City has received a copy of Chandler's PrivacyPolicy.

#### EXHIBIT "B"

## FEE SCHEDULE

[Beneath this sheet.]

#### FEE SCHEDULE

1. City shall compensate Contractor monthly an amount calculated on the average market value of City's portfolio, including accrued interest, in accordance with the following fee schedule.

Assets Under Managemen	Annual Asset Management Fee
First \$50 million	9 basis points (0.09 of 1%)
Next \$50 million	6 basis points (0.06 of 1%)
Assets over \$100 million	4 basis points (0.04 of 1%)

- 2. Fees are based on the amount of assets under management and are not based on transaction volume. Management fees will accrue if there are assets in the portfolio, even if there is no activity during the period. Since the firm calculates fees based on the average balance of assets under our direct management (market value including accrued interest), they will fluctuate based on portfolio value.
- 3. The fees expressed above do not include any custody fees that may be charged by City's bank or other third party custodian.
- 4. Fees shall be prorated to the effective date of termination on the basis of actual days elapsed, and any unearned portion of prepaid fees shall be refunded. City is not required to pay any start up or closing fees; there are no penalty fees.
- 5. Fees shall be deducted monthly in arrears from City's custody account.



# City of Orange

Investment Advisory and Management Services

November 3<sup>rd</sup>, 2021

Mia Corral Brown Senior Relationship Manager Jayson Schmitt, CFA Deputy CIO

**Christopher McCarry, AIF** Senior Portfolio Strategist



SECTION 1 SECTION 2 SECTION 3 SECTION 4 SECTION 5

Partnering With Chandler Asset Management

What We've Learned About City of Orange

**Client Service, Compliance & Reporting** 

Appendix

**Biographies & Disclosures** 



# Partnering With Chandler Asset Management



# Dedicated Engagement Team Working for City of Orange





Investment Management, Compliance, Operations, Client Service and Administration

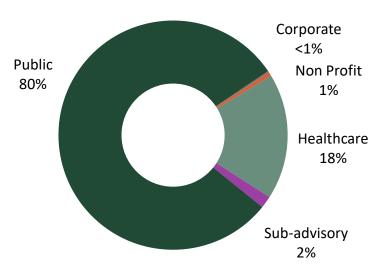
# Specializing in Investment Management for Public Agencies



"We believe if we do what is right for our clients, our own success will follow."

- California Based, Independent & Employee-Owned
  - Fixed income specialist since 1988
  - Founded by public investment professionals
  - Serve institutions with public sector focus, including management of \$7 billion for fifty-eight (58) California cities
  - Headquartered in San Diego, CA
- Custom Investment Programs
  - Investment solutions based on your risk profile and return goals
  - Strategies for operating, short- and long-term reserves
  - Direct contact with investment management team
- Stable Team of Investment Professionals
  - Team of investment professionals average over two decades portfolio management experience
  - Disciplined, repeatable investment philosophy and process
  - Proprietary investment analysis





# Lasting Partnerships with Southern California Neighbors



# Chandler's strong client retention rate is a testament to our commitment to our clients.

Inland Area Clients		
City of Chino Hills		
Coachella Valley Water District		
City of Corona		
Eastern Municipal Water District		
Elsinore Valley Municipal Water District		
City of Indio		
City of Menifee		
City of Moreno Valley		
City of Palm Springs		
City of Perris		
Rancho California Water District		
City of Riverside		
San Bernardino Municipal Water Department		
City of San Jacinto		
Temescal Valley Water District		
West Valley Water District		
Western Municipal Water District		

Los Angeles Area Clients		
Alameda Corridor Trans. Authority		
City of Agoura Hills		
City of Bell		
City of Camarillo		
City of El Monte		
City of Gardena		
City of La Mirada		
City of Long Beach		
Los Angeles County Metro. Trans. Authority		
City of Pico Rivera		
City of Pomona		
Three Valleys Municipal Water District		
Upper San Gabriel Mun. Water District		
Walnut Valley Water District		
West Basin Municipal Water District		
West San Gabriel Schools JPA		

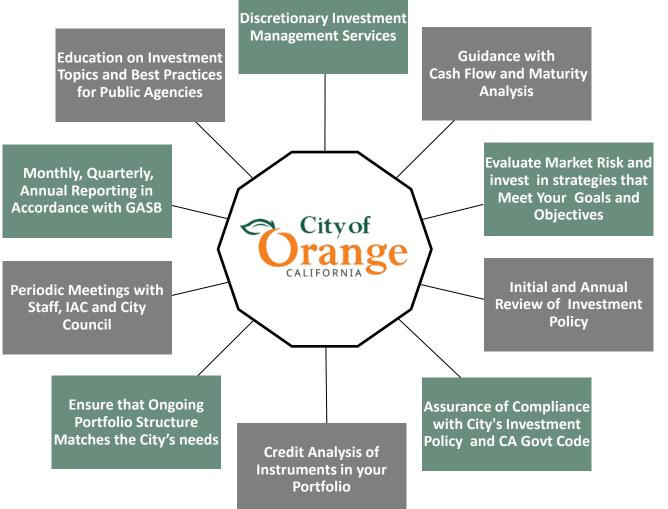
Whittier Area Schools Insurance Authority

Orange County Clients	
City of Brea	
City of Buena Park	
City of Costa Mesa	
East Orange County Water District	
City of Fountain Valley	
City of La Habra	
City of Mission Viejo	
Moulton Niguel Water District	
City of Newport Beach	
Orange County Sanitation District	
Orange County Transportation Authority	
City of San Clemente	
City of San Juan Capistrano	
South Coast Water District	
Transportation Corridor Agencies	
City of Tustin	
City of Westminster	

A listing of the firm's clients in the State of California's Inland area, Los Angeles area and Orange County, shown in alphabetical order as of 9/30/2021. This list only includes clients that have given permission to be listed. It is not known whether the clients listed approve or disapprove of Chandler Asset Management and the advisory services provided. Includes discretionary and non-discretionary relationships.



Chandler is committed to executing your scope of services so that you can fulfill your mission to continue to provide effective and efficient financial planning





# What We've Learned about City of Orange



# Observations on the City of Orange's Investment Policy



The City's Investment Policy is well written. If hired, we would like to discuss the following with the goal of adding diversification, limiting risk, and increasing the potential for risk-adjusted returns over a market cycle in the portfolio.

# Increase Diversification through the use of:

- Pass-Through Securities (asset-backed and mortgage-backed securities) as well as Supranational debt.
- Review and discuss maximum portfolio limitations of Medium-Term Notes and Commercial Paper to be in alignment with code.

## Risk Mitigation language:

• Consider adding limitations on callable securities as a percentage of assets in the portfolio.

## **Prohibited Investments:**

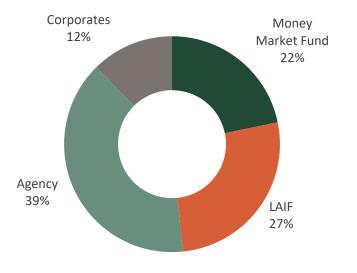
 Consider the inclusion of language from the passing of Senate Bill 998 permitting investments in securities backed by the U.S. Government that could result in a zero- or negative-interest accrual if held to maturity, sunsetting in 2026.

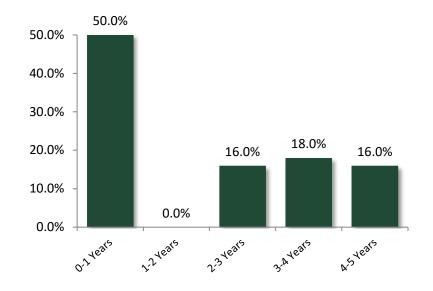


City of Orange's Portfolio Characteristics		
Total Market Value: \$155,641		
Yield To Maturity:	0.47%	
Weighted Average Maturity:	1.80 years	

#### **Asset Allocation**

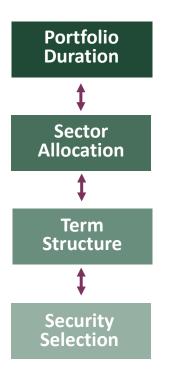








# Four Key Elements of Our Approach



Constraining portfolio duration relative to the benchmark

Strategic allocations to key sectors, with value-based rotation

Positioning securities along the yield curve to capture value across maturities

Selecting bonds that we believe are undervalued and offer the greatest potential for risk-adjusted return



# Initial Steps



# **Ongoing Management**

- Credit analysis of security issuers and financial institutions
- Asset-liability management
- Broker/dealer due diligence and relations
- Consistent application of a disciplined, conservative investment process. Our approach focuses on:
  - Safety of principal\*
  - Appropriate levels of liquidity
  - Diversification of risk

- Compliance with legal requirements, policies, and objectives
- Generating market yield and return





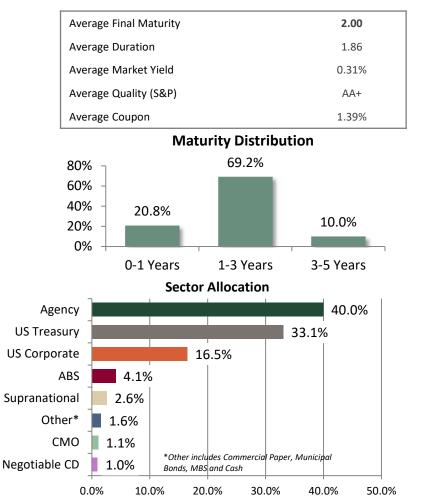


- Local Agency Investment Fund (LAIF)
- Matching maturities to known expenditures
- Invest in high-quality short-term securities permitted by State Code and the Investment Policy
- Targeted generally to a higher duration to enhance the potential to increase earning
- Invest in high-quality securities allowed by State Code and the Investment Policy
- Consider customized investment solutions for operating, project, restricted bond reserves and longer-term funds

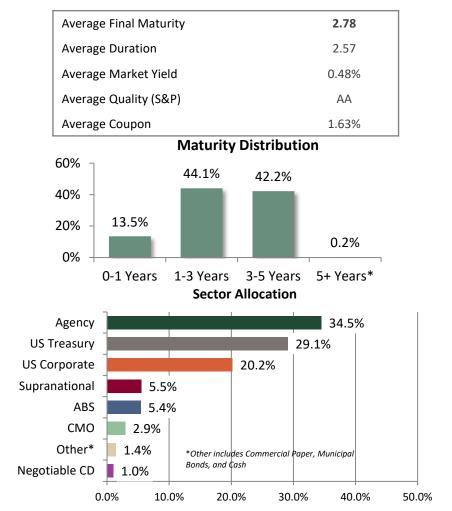
# Chandler's Composite Strategies as of June 30, 2021



Limited Maturity (1-3 Year)



#### Short Term Bond (1-5 Year)



Based on Chandler's Limited Maturity and Short Term Bond composite characteristics as of 06/30/2021.\*The Short Term Bond composite includes clients whose investment policy permits securities with maturities beyond five years. Credit Quality equivalent of composite/average of S&P, Moody's and Fitch ratings; "A" category includes "A-1" rated money market securities. The composite characteristic information presented above is supplemental information pursuant to GIPS®. There is no quarantee that investment in any of these styles will result in characteristics similar to those that appear in this presentation due to changes in economic conditions and other market factors. Past characteristic is not indicative of future results. Please see the GIPS Composite Reports at the end of this presentation for complete details. Chandler Asset Management

# Representative Client Portfolios as of June 30, 2021



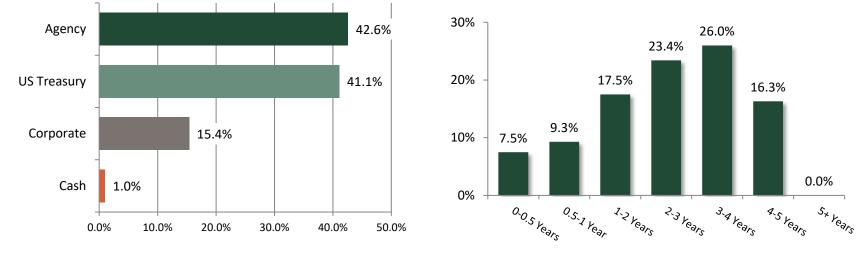
# Sample Client #1

- Sample client portfolio using 1-5 year strategy
  - Target duration of 2.5 years
- Client's portfolio follows investment policy similar to that of the City of Orange
- Average market yield to maturity: 0.44%.

Characteristics		
Average Modified Duration:	2.50 years	
Average Purchase YTM:	1.55%	
Average Market YTM:	0.44%	
Average S&P/Moody Rating:	AA+/Aa1	

Portfolio characteristics as of 6/30/2021





Portfolio characteristics based on representative client portfolio managed by Chandler Asset Management using Short Term Bond Strategy as of 06/30/21. References to portfolio allocation, asset types or, specific securities are examples of securities held in a portfolio and are not intended to be, and should not be interpreted as an offer, solicitation, or recommendation to purchase or sell any financial instrument, an indication that the purchase of such securities was or will be profitable, or representative of the composition or performance of the portfolio. There is no guarantee that investment in these styles will result in characteristics similar to those that appear in this presentation due to changes in economic conditions and other market factors. The information contained in this sample presentation was obtained from sources we believe to be reliable, but we do not guarantee its accuracy and are subject to change without notice. Past performance is not indicative of future success. Please see disclosures at the end of this presentation.

#### **Sector Allocation**

# Representative Client Portfolios as of June 30, 2021



0.0%

S\* Years

# Sample Client #2

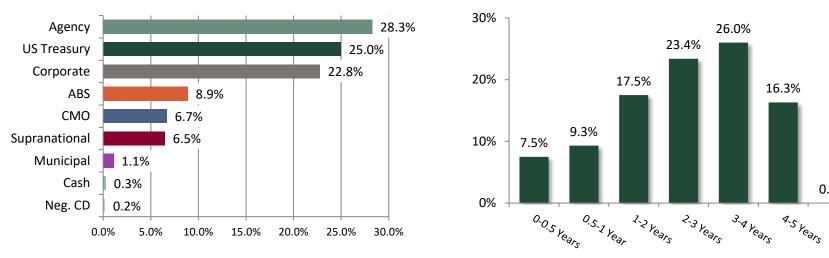
- Sample client portfolio using 1-5 year strategy
  - Target duration of 2.5 years
- Client's portfolio includes all securities permitted by California Government Code

Sector Allocation

Average market yield to maturity: **0.51%.** 

# Characteristics Average Modified Duration: 2.61 years Average Purchase YTM: 1.64% Average Market YTM: 0.51% Average S&P/Moody Rating: AA/Aa1

Portfolio characteristics as of 6/30/2021



#### Maturity Distribution

Portfolio characteristics based on representative client portfolio managed by Chandler Asset Management using Short Term Bond Strategy as of 06/30/21. References to portfolio allocation, asset types or, specific securities are examples of securities held in a portfolio and are not intended to be, and should not be interpreted as an offer, solicitation, or recommendation to purchase or sell any financial instrument, an indication that the purchase of such securities was or will be profitable, or representative of the composition or performance of the portfolio. There is no guarantee that investment in these styles will result in characteristics similar to those that appear in this presentation due to changes in economic conditions and other market factors. The information contained in this sample presentation was obtained from sources we believe to be reliable, but we do not guarantee its accuracy and are subject to change without notice. Past performance is not indicative of future success. Please see disclosures at the end of this presentation.



# **Chandler Investment Styles**

10-Year Gross of Fee Performance (Hypothetical) June 2011 – June 2021

Investment Styles	Portfolio Duration	Annualized Total Return 10 Year Period (Net of Fee)	10-Year Growth of \$100 Million Portfolio (Net of Fee)	Chandler Added Value Over LAIF \$100 Million Portfolio (Net)
LAIF	0.80	0.85%	\$108.8 million	N/A
Chandler's Limited Maturity (1-3 Year)	1.86	1.38%	\$114.7 million	\$5.9 million
Chandler's Short Term Bond (1-5 Year)	2.57	1.76%	\$119.1 million	\$10.3 million

\*Net performance for Chandler investment styles based on sample fee of 7.5 basis points (0.075 of 1%) relative to LAIF. LAIF returns include an administrative fee charged to investors by the California State Treasurer. LAIF duration estimated based on average maturity in days, as of 06/30/2021, divided by 365 days. Performance shown is hypothetical for a \$100 million portfolio and not based on an actual client's account. Performance for Chandler's Limited Maturity and Short Term Bond strategies has been calculated using historical composite performance compared to LAIF. Performance shown is gross of fees and other expenses, which will reduce performance. Past performance is not a guarantee of future results. All investment strategies have the potential for profit or loss. Market conditions or economic factors may alter the performance and results of a portfolio. Please see the GIPS Composite Reports and disclosures at the end of this presentation for further details. For one-on-one presentation only.



# Client Service, Compliance & Reporting





# **Educational Materials and Industry Presentations**



- Educational Case Study

We conduct formal training with City staff every time we meet on a myriad of topics. We will do the same for City of Orange, if requested.

- Weekly Economic Highlights
- Monthly Bond Market Summary
- In-Depth Insights via Chandler White Papers
- Online Educational Webinars



# **Consolidated reporting**

Provides an aggregate view of the entire investment program

# Monthly statements available by the 3<sup>rd</sup> business day

- Reports designed for use by management
  - Portfolio summary, compliance statement, reconciliation summary, holdings report, transactions ledger, income earned, cash flow report

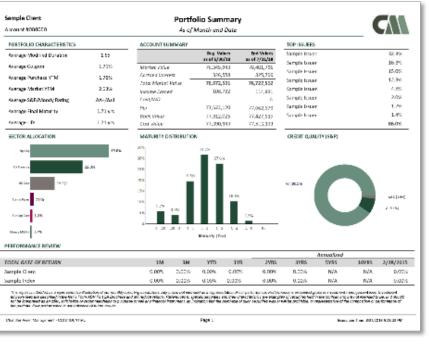
# Quarterly reports in person with investment management team

- Economic overview
- Account profile
  - Objectives and compliance statement
  - Portfolio summary, sector distribution, issuer report, quality distribution, duration distribution and investment performance
- Holdings report, transactions Ledger

# **Annual Reporting**

GASB 40 and 72

This sample report is being provided for illustrative purposes to demonstrate Chandler Asset Management's reporting capabilities. References to specific securities and their characteristics are examples of securities held in the portfolio and are not intended to be, and should not be interpreted as an offer, solicitation or recommendation to purchase or sell any financial instrument, an indication that the purchase of such securities was or will be profitable, or representative of the composition or performance of the portfolio. The information contained in this sample presentation was obtained from sources we believe to be reliable, but we do not guarantee its accuracy.



24/7 Online Access to City's Portfolio via the Chandler Client Portal





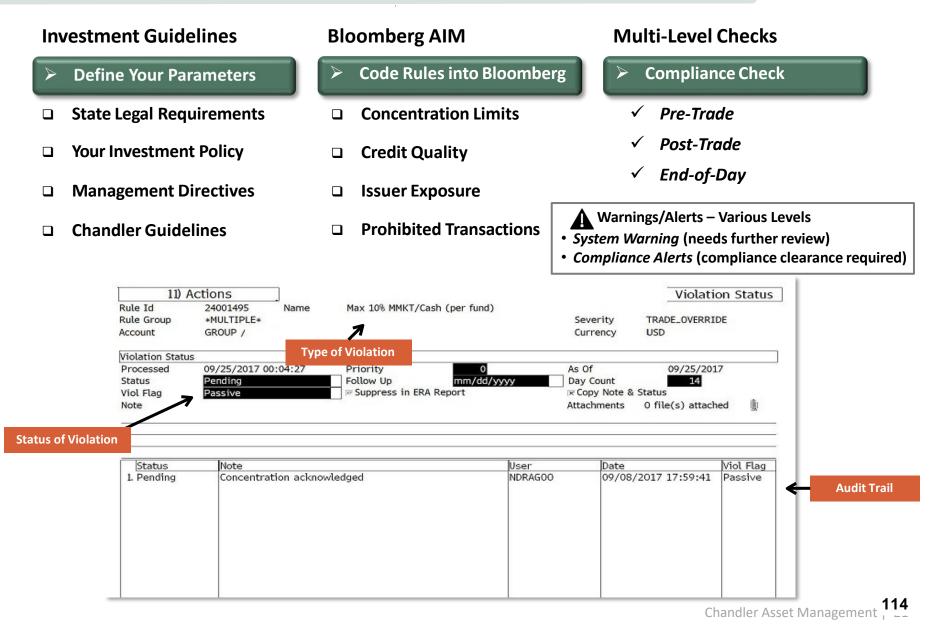
### Assets managed by Chandler Asset Management are in full compliance with California Government Code and with the Client's investment policy.

Category	Standard	Comment
Treasury Issues	No limitation	Complies
Agency Issues	No limitation	Complies
Supranationals	30% maximum; 5% max issuer; 5 years max maturity; Issued by IBRD, IFC, or IADB only; "AA" rated or higher by a NRSRO	Complies
Banker's Acceptances	40% maximum; 5% max issuer; <180 days maturity; A-1 rated equivalent by at least two NRSROs; "A" rated or better by two NRSROs on long-term debt	Complies
Commercial Paper	25% maximum; 5% max issuer; <270 days maturity; A-1 rated or higher by at least two NRSROs; "A" rated or higher by two NRSROs on long-term debt; Issuer is a corporation organized and operating within U.S. with assets in excess of \$500 million	Complies
Negotiable Certificates of Deposit	40% maximum; 5% max issuer; <180 days maturity; A-1 rated equivalent by at least two NRSROs; "A" rated or better by two NRSROs on long-term debt	Complies
Medium Term Notes	30% maximum; 5% max issuer; "A" rated or better by two NRSROs	Complies
Money Market Mutual Funds	20% maximum; 10% per fund; Highest rating by two NRSROs	Complies
Federally Insured Certificates of Deposit (CDs)/Time Deposit (TDs)	20% maximum (combined FDIC insured and collateralized TD/CD)	Complies
Collateralized Certificates of Deposit (CDs)/Time Deposit (TDs)	20% maximum (combined FDIC and collateralized TD/ CD); A-1, or higher by 2 NRSROs; "A" rated or higher by two NRSROs, if long-term debt	Complies
Mortgage Pass-throughs, CMOs and Asset Backed Securities	20% maximum; 5% max issuer; "AA" rated or higher by a NRSRO; "A" rated issuer or higher by a NRSRO; 5 years max maturity	Complies
Local Agency Investment Fund (LAIF)	Program limitation; Currently not used by investment adviser	Complies
Repurchase Agreement	1 year max maturity; 102% collateral; Currently not used by investment adviser	Complies
Prohibited Securities	Inverse floaters; Ranges notes, interest-only strips from mortgaged backed securities; Zero interest accrual securities	Complies
Max Per Issuer	5% (except U.S. government, its Agencies and GSEs, Money Market Fund or LGIP)	Complies
Maximum maturity	5 years	Complies

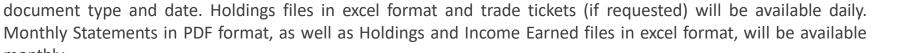
This sample report is being provided for illustrative purposes to demonstrate Chandler Asset Management's reporting capabilities. Elements of the Compliance Report are representative of investment guidelines promulgated by State Law or the entity's investment policy.

# Ensuring Compliance through Multi-Step Process





# Chandler's Online Client Portal



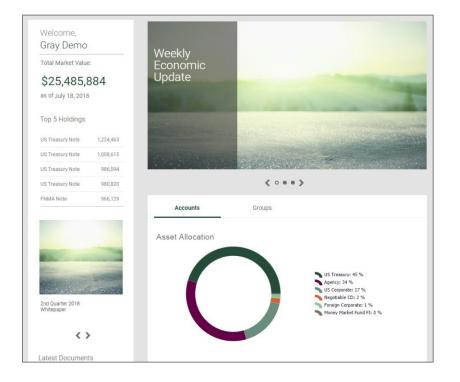
- Accessing Your Information. Access the Chandler Client Portal at any time through Chandler's website.
- **Mobile-Enabled Website.** The Chandler Client Portal is also designed to be viewed on mobile devices, including smart phones and tablets.
- **Customizable Holdings Reports.** Holdings Reports can be customized to display only the information you need. Add, delete, reorder, and group columns by simply dragging headers and the layout will save to your login profile.
- **Security Details**. Access detailed information about a specific holding in your portfolio using the hyperlink on each position.

systems.

monthly.

**Exporting Customized Fields.** Export the fields you need into a format that is compatible with your accounting

**Documents**. View available documents posted by Chandler in one area with advanced searching capabilities by



Chandler Asset Management



# Sample Transition Timeline

Week 1	Week 1-2	Week 2-3	Week 3-4	
Establish the Account	Kick-off Meeting	Review Investment Recommendations and Reporting	Investment of Funds	
<ul> <li>Notice of award</li> <li>Execute investment management agreement</li> <li>Complete new account documents</li> <li>Review investment policy and existing portfolio</li> </ul>	<ul> <li>Hold Kick off meeting</li> <li>Select appropriate benchmark</li> <li>Establish authority</li> <li>Written documentation of all decisions</li> </ul>	<ul> <li>Detailed plan for investing of assets</li> <li>Set up reporting and prepare account statements</li> <li>Access to the Chandler Client Portal</li> </ul>	<ul> <li>The City approves investment plan</li> <li>Make initial investments</li> </ul>	

# GN

# Expertise.

Since the inception of our firm 1988, we have been and continue to be thought-leaders in managing and reporting on public agency portfolios.

# Independence.

We are 100% employee-owned with no conflicts of interest from other divisions such as brokerage, banking, insurance, or financial advisory.

### Process.

Our investment team has developed proprietary tools and processes for structuring and managing fixed income portfolios.

### Customization.

We provide investment solutions designed to meet the specific objectives and policies of the City of Orange.

# Team Approach.

Our professionals will serve the City as a local, neighboring entity from our headquarters in San Diego. Our team approach draws from the collective wisdom and expertise of our staff, who have worked together to guide portfolios successfully through challenging markets.



# Appendix





### **Chandler Fees for City of Orange\***

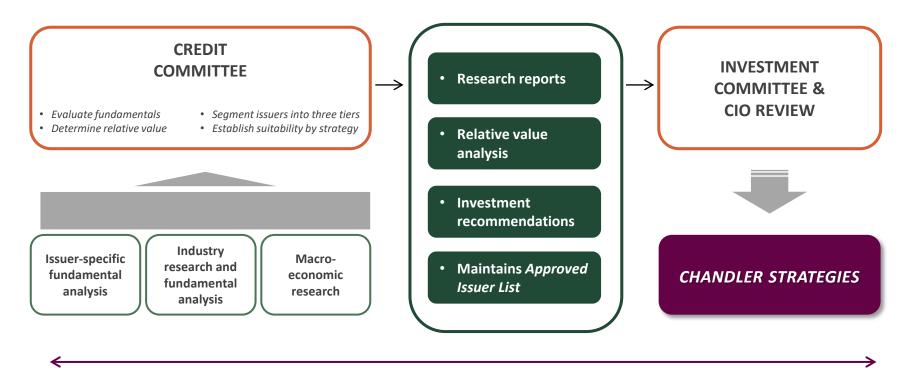
Assets Under Management	Annual Asset Management Fee
First \$50 million	0.09 of 1% (9 basis points)
Next \$50 million	0.06 of 1% (6 basis points)
Assets over \$100 million	0.04 of 1% (4 basis points)

### An example of the above fee schedule applied to different asset levels:

Total Assets Under Management	Annual Fee in Basis Points	Annual Fee in \$ dollars
\$50 million	9.0 basis points	\$45,000
\$75 million	8.0 basis points	\$60,000
\$100 million	7.5 basis points	\$75,000
\$125 million	6.8 basis points	\$85,000

# **Chandler's Credit Process**





Chandler's Credit Committee provides continuous oversight and monitoring of credit issues and issuers



# Biographies & Disclosures



# Biographies

### Jayson Schmitt, CFA

#### Deputy CIO

Jayson Schmitt is Deputy CIO at Chandler Asset Management. Jayson's expertise have been instrumental in the development and integration of quantitative analytic tools for the portfolio management process. He currently serves as Co-Chair of the Quantitative Analysis and Sector Committee and serves on the firm's Executive Management Team. Prior to joining the firm in 1995, Jayson was a Financial Analyst with USA Federal Credit Union. He originally joined the firm as an Operations Manager and was promoted to Portfolio Manager in 2003. Jayson earned his B.A. in economics from San Diego State University. He is a member of the CFA Society of San Diego and holds the designation of Chartered Financial Analyst.

#### **Mia Corral Brown**

#### Senior Relationship Manager

Mia Corral joined the firm in 2004 and has 22 years of experience providing client service to both institutional and public sector clients. Mia's area of focus is on the development of client relationships in the public sector and she serves as relationship manager for existing clients throughout Southern California. Prior to joining the firm in 2004, Mia was an Assistant Marketing Manager at Nicholas-Applegate Capital Management. Mia earned her B.A. in speech communication with an emphasis in business communications from San Diego State University. She is an active member of the California Society of Municipal Finance Officers, the Government Finance Officers Association, the California Municipal Treasurers Association and the California Association of Joint Power Authorities. She is also a founding member and past Board of Directors member for the San Diego Chapter of Women in Public Finance.

### Christopher McCarry, AIF

### Senior Portfolio Strategist

Christopher McCarry is a member of the Investment Management Team and participates actively in the portfolio management process as well as builds and maintains client relationships. As a portfolio strategist, Chris focuses on identifying and communicating key investment related themes and trends for implementation into fixed income strategies for local government and institutional clients. Chris has worked in the investment industry since 2001 with a diverse background in financial services. In his most recent role prior to Chandler, he was the Regional Vice President for Zack's Investment Management focusing on retail sales for the West Coast Territory. Chris earned his BA in both International Relations (Latin America Focus) and Spanish. He holds his Accredited Investment Fiduciary (AIF<sup>®</sup>) designation.

#### Kara Raynor-Sanchez

#### **Client Service Director**

Kara Raynor-Sanchez is Client Service Director and oversees the daily responsibilities of the Client Service team including client communication, client reporting and review/processing of client requested account activity. Kara collaborates with all departments at Chandler to respond to account-related questions and changes, as well as coordinates the onboarding process of new client accounts. She assumed the role of Client Service Director in 2019. Kara joined Chandler as an administrative associate in 2012. She graduated with her B.A. in communication, emphasis in public relations from University of the Pacific and earned her M.A. in communication from San Diego State University. Kara earned the CFA Institute's Investment Foundations Certificate (formerly Claritas Investment Certificate) in 2013.

# **GIPS®** Compliant Verification Statement





#### Verification Report

Chandler Asset Management, Inc. 6225 Lusk Boulevard San Diego, CA 92121

We have verified whether Chandler Asset Management, Inc. (the "Firm") has, for the periods from July 1, 1997 through March 31, 2020, established policies and procedures for complying with the Global Investment Performance Standards (GIPS\*) related to composite and pooled fund maintenance and the calculation, presentation, and distribution of performance that are designed in compliance with the GIPS standards, as well as whether these policies and procedures have been implemented on a firm-wide basis. GIPS\* is a registered trademark of CFA Institute. CFA Institute does not endorse or promote this organization, nor does it warrant the accuracy or quality of the content contained herein.

The Firm's management is responsible for its claim of compliance with the GIPS standards and the design and implementation of its policies and procedures. Our responsibilities are to be independent from the Firm and to express an opinion based on our verification. We conducted this verification in accordance with the required verification procedures of the GIPS standards, which includes testing performance on a sample basis. We also conducted such other procedures as we considered necessary in the circumstances.

In our opinion, for the periods from July 1, 1997 through March 31, 2020, the Firm's policies and procedures for complying with the GIPS standards related to composite and pooled fund maintenance, as well as the calculation, presentation, and distribution of performance, have been, in all material respects:

- · Designed in compliance with the GIPS standards, and
- Implemented on a firm-wide basis.

This report does not relate to or provide assurance on any specific performance report of the Firm or on the operational effectiveness of the Firm's controls or policies and procedures for complying with the GIPS standards.

Adviser Compliance Associates, LLC

Adviser Compliance Associates, LLC ACA Performance Services Division October 22, 2020

# **GIPS®** Composite Report: Limited Maturity



				Annual Ra	tes of Retur	n 2010 througł	า 2020			
		Returns		3 Year An	nualized	Dispersion		Asse	ets	
Year	Total	Total		Standard D	Deviation	Asset Wtd	Number of	Composite	% of Firm	Firm
End	Gross	Net	Index	Composite	Index	Std. Dev.	Portfolios	(MM)	Assets	(MM)
2010	2.96%	2.70%	2.35%	n/a	n/a	0.38%	8	201	3.50%	5,755
2011	1.88%	1.62%	1.55%	1.02%	1.02%	0.31%	9	222	3.74%	5,929
2012	1.16%	0.91%	0.43%	0.78%	0.73%	0.06%	15	474	7.37%	6,431
2013	0.30%	0.05%	0.36%	0.59%	0.50%	0.08%	18	797	11.12%	7,165
2014	0.87%	0.61%	0.62%	0.54%	0.43%	0.09%	21	879	9.88%	8,894
2015	0.74%	0.49%	0.54%	0.63%	0.56%	0.07%	27	1,328	11.31%	11,747
2016	1.11%	0.86%	0.88%	0.74%	0.76%	0.06%	31	1,081	8.39%	12,882
2017	0.85%	0.60%	0.43%	0.71%	0.74%	0.08%	32	1,178	8.60%	13,698
2018	1.69%	1.44%	1.59%	0.77%	0.85%	0.03%	31	1,905	11.51%	16,551
2019	3.87%	3.61%	3.55%	0.84%	0.94%	0.08%	39	2,653	13.57%	19,552
2020	3.25%	3.00%	3.12%	0.92%	1.21%	0.12%	39	2,713	12.21%	22,227

Chandler Asset Management claims compliance with the Global Investment Performance Standards (GIPS<sup>°</sup>) and has prepared and presented this report in compliance with the GIPS standards.

Chandler Asset Management has been independently verified by ACA Performance Services for the period of July 1, 1997 through March 31, 2020. The verification report is available upon request. A firm that claims compliance with the GIPS standards must establish policies and procedures for complying with all the applicable requirements of the GIPS standards. Verification provides assurance on whether the firm's policies and procedures related to composite maintenance, as well as the calculation, presentation, and distribution of performance, have been designed in compliance with the GIPS standards and have been implemented on a firm-wide basis. Verification does not provide assurance on the accuracy of any specific performance report.

1. Chandler Asset Management is an independent investment adviser registered as such with the Securities and Exchange Commission under the Investment Adviser's Act of 1940. Registration with the SEC does not imply a certain level of skill or training. Since 1988, Chandler Asset Management has provided fixed income investment management services to the public sector, as well as to foundations, endowments, individuals and corporations. A complete list and description of all of the firm's composites is available upon request.

2. The Limited Maturity Composite is a composite of individually managed accounts with an average modified duration approximately equal to the modified duration of the ICE BofA 1-3 Year US Treasury Index and a final stated maturity of individual securities of five years. The minimum account size required to be included in this composite is \$2 million. This composite was created September 1988. The name of this composite was changed from Short-Term Fixed Income effective June 30, 2009.

3. The ICE BofA 1-3 Year US Treasury Index tracks the performance of US dollar-denominated sovereign debt publicly issued by the US government in its domestic market. Qualifying securities must have at least one year remaining term to final maturity and less than three years remaining term to final maturity, a fixed coupon schedule, and a minimum amount outstanding of \$1 billion. Qualifying securities must have at least 18 months to final maturity at the time of issuance. Indexes are referred to for comparative purposes only and are not intended to parallel the risk or investment style of the portfolios in the Composite. Indexes do not utilize leverage. Index calculations do not reflect fees, brokerage commissions or other expenses of investing. Investors may not make direct investments into any index. Index data contained herein (and all trademarks related thereto) are owned by the indicated index provider, and may not be redistributed. The information herein has not been approved by the index provider.

4. Valuations are computed and performance reported in U.S. Dollars.

5. Performance is calculated using a time-weighted total rate of return, which links performance monthly, and is reported gross of investment management fees and custodial fees, but after all trading expenses. Results reflect the reinvestment of income, dividends and other earnings, and include realized and unrealized gains and losses and interest accrued through the last day of each month. Results do not reflect the potential impact of taxes. Past performance is not indicative of future results. Fees charged by Chandler Asset Management will reduce performance.

6. Net-of-fees performance returns are calculated by reducing the monthly gross performance by one-twelfth (1/12) of the actual maximum applicable fee of 0.25%, which is representative of our current fee schedule for this composite. These monthly returns are then geometrically linked to produce annual returns which are presented before custodial fees but after management fees and all trading expenses. Fees are negotiable and additional information regarding Chandler's fees is included in our Part 2A of Form ADV.

7. Dispersion is calculated using the asset weighted standard deviation of annual gross returns of those portfolios that were included in the composite for the entire year. For years when less than six portfolios were included in the composite for the full year, no dispersion measure is presented. The three-year annualized standard deviation measures the variability of the composite gross returns and the benchmark returns over the preceding 36-month period. Policies for valuing investments, calculating performance, and preparing GIPS reports are available upon request.

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# GIPS® Composite Report: Short Term Bond



				Annual Ra	ates of Retur	n 2010 through	า 2020			
		Returns		3 Year An	nualized	Dispersion		Asse	ets	
Year	Total	Total		Standard D	Deviation	Asset Wtd	Number of	Composite	% of Firm	Firm
End	Gross	Net	Index	Composite	Index	Std. Dev.	Portfolios	(MM)	Assets	(MM)
2010	3.97%	3.70%	3.46%	n/a	n/a	0.11%	33	1,906	33.12%	5,755
2011	2.90%	2.64%	3.19%	1.47%	1.65%	0.07%	32	1,866	31.48%	5,929
2012	1.80%	1.54%	0.98%	1.18%	1.27%	0.26%	38	2,133	33.17%	6,431
2013	0.04%	-0.21%	-0.16%	1.02%	1.10%	0.08%	39	2,168	30.26%	7,165
2014	1.42%	1.17%	1.24%	0.96%	0.99%	0.07%	40	2,325	26.14%	8,894
2015	1.15%	0.90%	0.96%	1.11%	1.18%	0.07%	44	3,403	28.97%	11,747
2016	1.30%	1.04%	1.08%	1.24%	1.39%	0.05%	49	4,131	32.07%	12,882
2017	1.08%	0.83%	0.67%	1.19%	1.34%	0.11%	48	3,783	27.62%	13,698
2018	1.53%	1.27%	1.55%	1.22%	1.40%	0.05%	48	3,485	21.06%	16,551
2019	4.55%	4.29%	4.19%	1.22%	1.39%	0.19%	55	5,199	26.59%	19,552
2020	4.43%	4.17%	4.22%	1.32%	1.70%	0.11%	59	6,234	28.05%	22,227

Chandler Asset Management claims compliance with the Global Investment Performance Standards (GIPS<sup>°</sup>) and has prepared and presented this report in compliance with the GIPS standards.

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The Short Term Bond Composite is a composite of individually managed accounts with an average modified duration approximately equal to the modified duration of the ICE BofA 1-5 Year US Treasury & Agency Index and a
maximum final stated maturity of individual securities of five years. The minimum account size required to be included in this composite is \$2 million. This composite was created in September 1995. The name of this
composite was changed from 1-5 Year Government Fixed Income effective June 30, 2009.

3. The ICE BofA 1-5 Year US Treasury & Agency Index tracks the performance of US dollar denominated US Treasury and nonsubordinated US agency debt issued in the US domestic market. Qualifying securities must have an investment grade rating (based on an average of Moody's, S&P and Fitch). Qualifying securities must have at least one year remaining term to final maturity and less than five years remaining term to final maturity, at least 18 months to maturity at time of issuance, a fixed coupon schedule, and a minimum amount outstanding of \$1 billion for sovereigns and \$250 million for agencies. Indexes are referred to for comparative purposes only and are not intended to parallel the risk or investment style of the portfolios in the Composite. Indexes do not utilize leverage. Index calculations do not reflect fees, brokerage commissions or other expenses of investing. Investors may not make direct investments into any index. Index data contained herein (and all trademarks related thereto) are owned by the indicated index provider, and may not be redistributed. The information herein has not been approved by the index provider.

#### 4. Valuations are computed and performance reported in U.S. Dollars.

- 5. Performance is calculated using a time-weighted total rate of return, which links performance monthly, and is reported gross of investment management fees and custodial fees, but after all trading expenses. Results reflect the reinvestment of income, dividends and other earnings, and include realized and unrealized gains and losses and interest accrued through the last day of each month. Results do not reflect the potential impact of taxes. Past performance is not indicative of future results. Fees charged by Chandler Asset Management will reduce performance.
- 6. Net-of-fees performance returns are calculated by reducing the monthly gross performance by one-twelfth (1/12) of the actual maximum applicable fee of 0.25%, which is reflective of our current fee schedule for this composite. These monthly returns are then geometrically linked to produce annual returns which are presented before custodial fees but after management fees and all trading expenses. Fees are negotiable and additional information regarding Chandler's fees is included in our Part 2A of Form ADV.
- 7. Dispersion is calculated using the asset weighted standard deviation of annual gross returns of those portfolios that were included in the composite for the entire year. For years when less than six portfolios were included in the composite for the full year, no dispersion measure is presented. The three-year annualized standard deviation measures the variability of the composite gross returns and the benchmark returns over the preceding 36month period. Policies for valuing investments, calculating performance, and preparing GIPS reports are available upon request.
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# Disclosures



#### LAIF

The California State Local Agency Investment Fund (LAIF) is an investment portfolio managed by the State Treasurer. All securities are purchased under the authority of Government Code Section 16430 and 16480.4 and include securities issued by entities of the US Government, including the US Treasury and Agencies, Corporate debt, Certificates of Deposit, Mortgage Backed Securities and certain loans to the State and state agencies. The average maturity of the Fund will be between 120 days and 18 months.

#### ICE BofA 1-3 Year US Treasury Index

The ICE BofA 1-3 Year US Treasury Index tracks the performance of US dollar denominated sovereign debt publicly issued by the US government in its domestic market. Qualifying securities must have at least one-year remaining term to final maturity and less than three years remaining term to final maturity, a fixed coupon schedule and a minimum amount outstanding of \$1 billion. Qualifying securities must have at least 18 months to final maturity at the time of issuance. (Index: G1O2. Please visit www.mlindex.ml.com for more information).

#### ICE BofA 1-5 Year US Treasury & Agency Index

The ICE BofA US Treasury & Agency Index tracks the performance of US dollar denominated US Treasury and nonsubordinated US agency debt issued in the US domestic market. Qualifying securities must have an investment grade rating (based on an average of Moody's, S&P and Fitch). Qualifying securities must have at least one-year remaining term to final maturity and less than five years remaining term to final maturity, at least 18 months to maturity at time of issuance, a fixed coupon schedule and a minimum amount outstanding of \$1 billion for sovereigns and \$250 million for agencies. (Index: GVA0. Please visit www.mlindex.ml.com for more information).

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# Disclosures



The information herein is provided for informational purposes only and should not be construed as a recommendation of any security, strategy, or investment product, nor an offer or solicitation for the purchase or sale of any financial instrument. References to sample securities, products or investment indices are for informational purposes and do not imply that managing portfolios to those securities or styles will achieve comparable returns.

Index returns assume reinvestment of all distributions. Historical performance results for investment indexes generally do not reflect the deduction of transaction and/or custodial charges or the deduction of an investment management fee, the incurrence of which would have the effect of decreasing historical performance results. It is not possible to invest directly in an index. Past performance is not indicative of future results.

Any forecasts, forward-looking statements and assumptions are inherently limited and should not be relied upon as an indicator of future results. Any opinions or views constitute judgments made by the author at the date of this presentation and may become outdated or superseded at any time without notice. Any statements concerning financial market trends are based on current market conditions, which will fluctuate.

Economic factors, market conditions and investment strategies will affect the performance of any portfolio and there are no assurances that it will match or outperform any particular benchmark. The data contained in this presentation is the property of those providers, which was obtained from sources believed to be reliable, but are subject to change at any time at the provider's discretion. Unless otherwise noted, Chandler is the source of data contained in this presentation.

Fixed income investments are subject to interest, credit and market risk. Interest rate risk: the value of fixed income investments will decline as interest rates rise. Credit risk: the possibility that the borrower may not be able to repay interest and principal. Low rated bonds generally have to pay higher interest rates to attract investors willing to take on greater risk. Market risk: the bond market in general could decline due to economic conditions, especially during periods of rising interest rates.

Where listed, certain performance shown is hypothetical and does not represent actual trading in a client's account. HYPOTHETICAL OR SIMULATED PERFORMANCE RESULTS HAVE CERTAIN LIMITATIONS. UNLIKE AN ACTUAL PERFORMANCE RECORD, SIMULATED RESULTS DO NOT REPRESENT ACTUAL TRADING. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFIT OR LOSSES SIMILAR TO THOSE SHOWN. THERE ARE FREQUENTLY SHARP DIFFERENCES BETWEEN HYPOTHETICAL PERFORMANCE RESULTS AND THE ACTUAL RESULTS SUBSEQUENTLY ACHIEVED BY ANY PARTICULAR TRADING PROGRAM. ONE OF THE LIMITATIONS OF HYPOTHETICAL PERFORMANCE RESULTS IS THAT THEY ARE GENERALLY PREPARED WITH THE BENEFIT OF HINDSIGHT. IN ADDITION, HYPOTHETICAL TRADING DOES NOT INVOLVE FINANCIAL RISK AND DOES NOT TAKE INTO ACCOUNT THAT MATERIAL AND MARKET FACTORS MAY HAVE IMPACTED THE ADVISER'S DECISION-MAKING IF THE ADVISER WERE ACTUALLY MANAGING CLIENT'S MONEY. NO HYPOTHETICAL TRADING RECORD CAN COMPLETELY ACCOUNT FOR THE IMPACT OF FINANCIAL RISK IN ACTUAL TRADING. FOR EXAMPLE. THE ABILITY TO WITHSTAND LOSSES OR ADHERE TO A PARTICULAR TRADING PROGRAM IN SPITE OF TRADING LOSSES ARE MATERIAL POINTS WHICH CAN ALSO ADVERSELY AFFECT ACTUAL TRADING RESULTS. THERE ARE NUMEROUS OTHER FACTORS RELATED TO THE MARKETS IN GENERAL OR TO THE IMPLEMENTATION OF ANY SPECIFIC TRADING PROGRAM WHICH CANNOT BE FULLY ACCOUNTED FOR IN THE PREPARATION OF HYPOTHETICAL PERFORMANCE RESULTS, ALL OF WHICH CAN ADVERSELY AFFECT ACTUAL TRADING RESULTS. It should not be assumed that investors who invest in Chandler Asset Management's Portfolios will be profitable or achieve the hypothetical performance results reflected or any corresponding index presented. Actual performance of and holdings and investment implementation in Chandler Asset Management's client accounts can materially differ from that of the hypothetical models presented herein and performance can be higher or lower than the results shown. Investors may have experienced investment results during the corresponding time periods that were materially different from those portrayed. Back-tested performance does not represent actual performance and should not be interpreted as an indication of such performance. The opinions referenced are as of the date of publication and are subject to change. Chandler Asset Management has discretion in the timing of trade execution and selection of securities traded and utilized in any client account, which can and will materially differ from the hypothetical simulated performance based upon a variety of factors, including the adviser's discretion to not follow any trading signal generated and to determine the timing and implementation of a trade (which can include securities other than those listed).





# Agenda Item

City Council

ltem #: 3.	7. 11/9/2021	File #: 21-0599
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

# 1. SUBJECT

Agreement with Secoy Architects, Inc. for architectural design and construction support for Civic Center Weimer Room and Administration Lobby Remodel.

### 2. SUMMARY

This agreement authorizes Secoy Architects, Inc. to provide consulting services for the architectural design and construction support for Civic Center Weimer Room and Administration Lobby Remodel (SP-4194).

### 3. **RECOMMENDED ACTION**

- 1. Approve agreement with Secoy Architects, Inc. in the amount of \$58,492.50, representing an original amount of \$53,175 plus a 10% contingency of \$5,317.50 for Civic Center Weimer Room and Administration Lobby Remodel; and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the appropriation of \$320,000 from General Fund (500) to 500.5028.56020.20494 for both architectural design and construction phase of the Civic Center Weimer Room and Administration Lobby Remodel.

### 4. FISCAL IMPACT

The total expenditure for this agreement is \$58,492.50 and will be funded in Civic Center Weimer Room and Administration Lobby Remodel (20494) through General Fund (500).

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

### Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

The Orange Civic Center was built in 1962 and designed by Welton Becket of Los Angeles, a highly revered architectural firm with world renowned status in the design community. Minimal improvements have been done to the Weimer Room and Administration Lobby at the Civic Center since the construction. As a result, the area is showing its age with the current decor and furnishings being dated and not very functional.

Item #: 3.7.

The City is looking to remodel the Weimer Room and the Administration Building Lobby with a design aesthetic that pays homage to the mid-century architecture of the building. One of the goals of the design will be to provide functionality and integration of current technology within a historic resource. The design will build upon the design efforts that we saw with the Council Chamber remodel and will help further a design vocabulary and theme that is consistent throughout the Civic Center.

The Administration Building's Lobby will be remodeled to eliminate the City Attorney's unused lobby area and expand the space in the main lobby to better serve the City Clerk's functions. This will also increase the space for the general public and will assist the City Clerk customer service efforts. In addition, the City Clerk's front counter area will be improved to allow more efficient interactions with the public.

Secoy Architects, Inc. has extensive knowledge of the Civic Center's architectural history and the need to preserve the building's design aesthetic. Secoy Architect, Inc. has provided architectural services for several City Hall improvements including the successful completion of the Council Chamber remodel in 2020.

With the execution of this agreement, Secoy Architects, Inc. will be responsible for:

- Coordinating with the City to understand and develop overall goals and objectives and propose schematic design concepts.
- Prepare a preliminary design package, including floor plans, interior/exterior elevation plans, 3D studies of the design, etc.
- Provide construction documents consisting of drawings and specifications detailing the requirements for the construction of the project.
- Support the bid process and the construction administration phase.

# 7. ATTACHMENT

• Professional Services Agreement with Secoy Architects, Inc.



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# 7. ATTACHMENT

• Professional Services Agreement with Secoy Architects, Inc.

### PROFESSIONAL SERVICES AGREEMENT [Architectural Design and Construction Administration Services]

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made at Orange, California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and SECOY ARCHITECTS, INC., a California corporation ("Contractor"), who agree as follows:

1. <u>Services</u>. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to the reasonable satisfaction of City the services set forth in Exhibit "A," which is attached hereto and incorporated herein by reference. As a material inducement to City to enter into this Agreement, Contractor represents and warrants that it has thoroughly investigated and considered the scope of services and fully understands the difficulties and restrictions in performing the work. The services which are the subject of this Agreement are not in the usual course of City's business and City relies on Contractor's representation that it is independently engaged in the business of providing such services and is experienced in performing the work. Contractor shall perform all services in a manner reasonably satisfactory to City and in a manner in conformance with the standards of quality normally observed by an entity providing such services to a municipal agency. All services provided shall conform to all federal, state and local laws, rules and regulations and to the best professional standards and practices. The terms and conditions set forth in this Agreement shall control over any terms and conditions in Exhibit "A" to the contrary.

Randy Nguyen, Principal Civil Engineer ("City's Project Manager"), shall be the person to whom Contractor will report for the performance of services hereunder. It is understood that Contractor's performance hereunder shall be under the supervision of City's Project Manager (or his/her designee), that Contractor shall coordinate its services hereunder with City's Project Manager to the extent required by City's Project Manager, and that all performances required hereunder by Contractor shall be performed to the satisfaction of City's Project Manager and the City Manager.

### 2. <u>Compensation and Fees</u>.

**a.** Contractor's total compensation for all services performed under this Agreement, shall not exceed FIFTY-THREE THOUSAND ONE HUNDRED SEVENTY-FIVE DOLLARS and 00/100 (\$53,175.00) without the prior written authorization of City.

**b.** The above compensation shall include all costs, including, but not limited to, all clerical, administrative, overhead, insurance, reproduction, telephone, travel, auto rental, subsistence and all related expenses.

**c.** In addition to the scheduled services to be performed by the Contractor, the parties recognize that additional, unforeseen work and services may be required by City's Project Manager. In anticipation of such contingencies, the sum of FIVE THOUSAND THREE HUNDRED SEVENTEEN DOLLARS and 50/100 (\$5,317.50) has been added to the total compensation of this Agreement. City's Project Manager may approve the additional work and

the actual costs incurred by the Contractor in performance of additional work or services in accordance with such amount as City's Project Manager and the Contractor may agree upon in advance. Said additional work or services and the amount of compensation therefor, up to the amount of the authorized contingency, shall be memorialized in the form of an Amendment to Agreement approved by the City Manager on a form acceptable to the City Attorney. The Contractor agrees to perform only that work or those services that are specifically requested by the City's Project Manager. Any and all additional work and services performed under this Agreement shall be completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care in accordance with a cost estimate or proposal submitted to and approved by City's Project Manager prior to the commencement of such services.

**d.** The total amount of compensation under this Agreement, including contingencies, shall not exceed FIFTY-EIGHT THOUSAND FOUR HUNDRED NINETY-TWO DOLLARS and 50/100 (\$58,492.50).

### 3. <u>Payment</u>.

**a.** As scheduled services are completed, Contractor shall submit to City an invoice for the services completed, authorized expenses and authorized extra work actually performed or incurred.

**b.** All such invoices shall state the basis for the amount invoiced, including services completed, the number of hours spent and any extra work performed.

**c.** City will pay Contractor the amount invoiced within thirty (30) days after the approval of the invoice.

**d.** Payment shall constitute payment in full for all services, authorized costs and authorized extra work covered by that invoice.

4. <u>Change Orders</u>. No payment for extra services caused by a change in the scope or complexity of work, or for any other reason, shall be made unless and until such extra services and a price therefor have been previously authorized in writing and approved by City as an amendment to this Agreement. City's Project Manager is authorized to approve a reduction in the services to be performed and compensation therefor. All amendments shall set forth the changes of work, extension of time, and/or adjustment of the compensation to be paid by City to Contractor and shall be signed by the City's Project Manager, City Manager or City Council, as applicable.

5. <u>Licenses</u>. Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the work contemplated by this Agreement and that Contractor and its subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Agreement.

6. <u>Independent Contractor</u>. At all times during the term of this Agreement, Contractor shall be an independent contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Agreement. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that it and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

7. <u>Contractor Not Agent</u>. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind City to any obligation whatsoever.

8. <u>Designated Persons</u>. Only those qualified persons authorized by City's Project Manager, or as designated in Exhibit "A," shall perform work provided for under this Agreement. It is understood by the parties that clerical and other nonprofessional work may be performed by persons other than those designated.

9. <u>Assignment or Subcontracting</u>. No assignment or subcontracting by Contractor of any part of this Agreement or of funds to be received under this Agreement shall be of any force or effect unless the assignment has the prior written approval of City. City may terminate this Agreement rather than accept any proposed assignment or subcontracting. Such assignment or subcontracting may be approved by the City Manager or his/her designee.

**10.** <u>**Time of Completion**</u>. Except as otherwise specified in Exhibit "A," Contractor shall commence the work provided for in this Agreement within five (5) days of the Effective Date of this Agreement and diligently prosecute completion of the work in accordance with the time period set forth in Exhibit "A" hereto, or as otherwise agreed to by and between the representatives of the parties.

**11.** <u>**Time Is of the Essence**</u>. Time is of the essence in this Agreement. Contractor shall do all things necessary and incidental to the prosecution of Contractor's work.

### 12. <u>Reserved</u>.

13. <u>Delays and Extensions of Time.</u> Contractor's sole remedy for delays outside its control, other than those delays caused by City, shall be an extension of time. No matter what the cause of the delay, Contractor must document any delay and request an extension of time in writing at the time of the delay to the satisfaction of City. Any extensions granted shall be limited to the length of the delay outside Contractor's control. If Contractor believes that delays caused by City will cause it to incur additional costs, it must specify, in writing, why the delay has caused additional costs to be incurred and the exact amount of such cost at the time the delay occurs. No

additional costs can be paid that exceed the not to exceed amount stated in Section 2.a, above, absent a written amendment to this Agreement.

14. <u>Products of Contractor</u>. The documents, studies, evaluations, assessments, reports, plans, citations, materials, manuals, technical data, logs, files, designs and other products produced or provided by Contractor for this Agreement shall become the property of City upon receipt. Contractor shall deliver all such products to City prior to payment for same. City may use, reuse or otherwise utilize such products without restriction.

**15.** <u>Equal Employment Opportunity</u>. During the performance of this Agreement, Contractor agrees as follows:

**a.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

**b.** Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

**c.** Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

16. <u>Conflicts of Interest</u>. Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a consultant to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code. Contractor further agrees that it shall not be eligible to work as the design/build firm for the project that is the subject of this Agreement.

### 17. <u>Indemnity</u>.

**a.** To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold City, its City Council and each member thereof, and the officers, officials, agents and employees of City (collectively the "Indemnitees") entirely harmless from all liability arising out of:

(1) Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or Contractor's subcontractor's employees arising out of Contractor's work under this Agreement, including any and all claims under any law pertaining to Contractor or its employees' status as an independent contractor and any and all claims under Labor Code section 1720 related to the payment of prevailing wages for public works projects; and

(2) Any claim, loss, injury to or death of persons or damage to property caused by any act, neglect, default, or omission other than a professional act or omission of Contractor, or person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, or any of them, arising out of, or in any way connected with the work or services which are the subject of this Agreement, including injury or damage either on or off City's property; but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of City. Contractor, at its own expense, cost and risk, shall indemnify any and all claims, actions, suits or other proceedings that may be brought or instituted against the Indemnitees on any such claim or liability covered by this subparagraph, and shall pay or satisfy any judgment that may be rendered against the Indemnitees, or any of them, in any action, suit or other proceedings as a result of coverage under this subparagraph.

**b.** To the fullest extent permitted by law, and as limited by California Civil Code 2782.8, Contractor agrees to indemnify and hold Indemnitees harmless from all liability arising out of any claim, loss, injury to or death of persons or damage to property to the extent caused by its negligent professional act or omission in the performance of professional services pursuant to this Agreement.

**c.** Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

**d.** The indemnities set forth in this section shall survive any closing, rescission, or termination of this Agreement, and shall continue to be binding and in full force and effect in perpetuity with respect to Contractor and its successors.

### 18. <u>Insurance</u>.

**a.** Contractor shall carry workers' compensation insurance as required by law for the protection of its employees during the progress of the work. Contractor understands that it is an independent contractor and not entitled to any workers' compensation benefits under any City program.

**b.** Contractor shall maintain during the life of this Agreement the following minimum amount of comprehensive general liability insurance or commercial general liability insurance: the greater of (1) One Million Dollars (\$1,000,000) per occurrence; or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage and be written on an occurrence basis.

**c.** Contractor shall maintain during the life of this Agreement, the following minimum amount of automotive liability insurance: the greater of (1) a combined single limit of One Million Dollars (\$1,000,000); or (2) all the insurance coverage and/or limits carried by or available to Contractor. Said insurance shall cover bodily injury, death and property damage for all owned, non-owned and hired vehicles and be written on an occurrence basis.

**d.** Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor under this Agreement.

e. Each policy of general liability and automotive liability shall provide that City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Contractor under this Agreement. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 18.b and c, above, shall apply to City as an additional insured. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth herein shall be maintained for the duration of the Agreement.

**f**. Contractor shall maintain during the life of this Agreement professional liability insurance covering errors and omissions arising out of the performance of this Agreement with a minimum limit of One Million Dollars (\$1,00,000) per claim. Contractor agrees to keep such policy in force and effect for at least five (5) years from the date of completion of this Agreement.

**g.** The insurance policies maintained by Contractor shall be primary insurance and no insurance held or owned by City shall be called upon to cover any loss under the policy. Contractor will determine its own needs in procurement of insurance to cover liabilities other than as stated above.

**h.** Before Contractor performs any work or prepares or delivers any materials, Contractor shall furnish certificates of insurance and endorsements, as required by City, evidencing the aforementioned minimum insurance coverages on forms acceptable to City, which shall provide that the insurance in force will not be canceled or allowed to lapse without at least ten (10) days' prior written notice to City.

i. Except for professional liability insurance coverage that may be required by this Agreement, all insurance maintained by Contractor shall be issued by companies admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide. In the case of professional liability insurance coverage, such coverage shall be issued by companies either licensed or admitted to conduct business in California so long as such insurer possesses the aforementioned Best rating.

**j** Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Agreement unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom, by way of set-off from any sums owed Contractor.

**k.** Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance.

**I.** Contractor shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to City for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**19.** <u>**Termination**</u>. City may for any reason terminate this Agreement by giving Contractor not less than five (5) days' written notice of intent to terminate. Upon receipt of such notice, Contractor shall immediately cease work, unless the notice from City provides otherwise. Upon the termination of this Agreement, City shall pay Contractor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Agreement, unless termination by City shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

20. <u>Maintenance and Inspection of Records</u>. In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Agreement. City and its authorized representatives shall have access to and the right to audit and reproduce any of Contractor's records regarding the services provided under this Agreement. Contractor shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Contractor agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

### 21. <u>Compliance with all Laws/Immigration Laws</u>.

**a.** Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement.

**b.** If the work provided for in this Agreement constitutes a "public works," as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid, to the extent Contractor's employees will perform any work that falls within any of the

classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that it, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations (<u>www.dir.ca.gov/DLSR</u>). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

**c.** Contractor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Agreement comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Agreement who is ineligible to work in the United States or under the terms of this Agreement; and

(3) Has properly maintained, and shall at all times during the term of this Agreement properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and

(4) Has responded, and shall at all times during the term of this Agreement respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

**d.** Contractor shall require all subcontractors or subconsultants to make the same representations and warranties as set forth in Subsection 21.c.

e. Contractor shall, upon request of City, provide a list of all employees working under this Agreement and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Agreement without written notice to City, accompanied by the verification required herein for such employees.

**f.** Contractor shall require all subcontractors or sub-consultants to make the same verification as set forth in Subsection 21.e.

**g.** If Contractor or subcontractor knowingly employs an employee providing work under this Agreement who is not authorized to work in the United States, and/or fails to

follow federal laws to determine the status of such employee, that shall constitute a material breach of this Agreement and may be cause for immediate termination of this Agreement by City.

h. Contractor agrees to indemnify and hold City, its officers, officials, agents and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Agreement.

Governing Law and Venue. This Agreement shall be construed in accordance 22. with and governed by the laws of the State of California and Contractor agrees to submit to the jurisdiction of California courts. Venue for any dispute arising under this Agreement shall be in Orange County, California.

23. **Integration**. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

24. Notice. Except as otherwise provided herein, all notices required under this Agreement shall be in writing and delivered personally, by e-mail, or by first class U.S. mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by email shall be deemed received on the date of the e-mail transmission.

"CONTRACTOR"	"CITY"
Secoy Architects, Inc.	City of Orange
160 S. Cypress Street	300 E. Chapman Avenue
Orange, CA 92866	Orange, CA 92866-1591
Attn.: Susan Secoy Jensen	Attn.: Randy Nguyen
Telephone: (714) 639-4367	Telephone: (714) 744-5531
E-Mail: susan@secoyarchitects.com	E-Mail: rnguyen@cityoforange.org

25. **<u>Counterparts</u>**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

### [Remainder of page intentionally left blank; signatures on next page]

**IN WITNESS** of this Agreement, the parties have entered into this Agreement as of the year and day first above written.

### "CONTRACTOR"

"CITY"

SECOY ARCHITECTS, INC., a California corporation

*By:	
Printed Name:	
Title:	

CITY OF ORANGE, a municipal corporation

By:

Mark A. Murphy, Mayor

*By:	
Printed Name:	
Title:	

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning Senior Assistant City Attorney

\*<u>NOTE</u>: City requires the following signature(s) on behalf of the Contractor:

- -- (1) the Chairman of the Board, the President or a Vice-President, <u>AND</u> (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. <u>OR</u>
- -- The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to City.

### EXHIBIT "A"

# **SCOPE OF SERVICES**

[Beneath this sheet.]



October 18, 2021

Mr. Frank Sun City of Orange 300 East Chapman Avenue Orange, CA 92866

Telephone: 714 744 5529 Email: fsun@cityoforange.org

Dear Frank:

We are pleased to submit this proposal to provide professional services for the Remodel of the Weimer Room and City Attorney's office/lobby areas located at 300 East Chapman Avenue, in the city of Orange, California. For this proposal, the project shall be referred to as Orange Civic Center Weimer Room Remodel.

### SCOPE OF PROJECT

We understand that the scope of Secoy Architects, Inc. responsibilities for the project shall include:

- Programming/schematic design
- Preliminary Design
- Construction Documents
- Bid Phase
- Construction Administration Phase

#### BASIC SERVICES

#### PHASE | - PROGRAMMING/SCHEMATIC DESIGN

Secoy Architects, Inc. shall consult with the Client to review and validate the projection plan. It is the Client's responsibility to provide as-built plans of the project.

- A. Review existing information pertaining to total space requirements; organizational and operating structure; present and projected requirements and to understand and develop overall goals and objectives for the project, including project schedule.
- B. Provide options of the schematic design concept.
- C. Attend meetings with the Client.

### PHASE || - PRELIMINARY DESIGN

Upon approval of the schematic design concept and based upon input from that phase, Secoy Architects, Inc. will prepare a preliminary design package to include:

- A. Floor Plans @ 1/4" =1'-0" scale.
- B. Interior Elevations of affected areas.
- C. Exterior Elevations of affected areas.
- D. Building colors and materials.
- E. Finishes and fixtures.
- F. 3D studies of the design, as required.

#### PHASE III – CONSTRUCTION DOCUMENTS

Based upon the approved design drawings and any further adjustments in the scope or quality of the project, Secoy Architects, Inc. shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for bidding the construction of the project. These documents will consist of the following sheets and appropriate information:

- A. Cover Sheet.
- B. Floor Plans.
- C. Electrical requirements and conduit placement to be specified with coordination and review of staff requirements.
- D Elevations and Details for affected areas.
- E. Finish schedules and specifications.
- F. Specify conduit floor cuts and detail with specification the location of floor boxes, and penetrations.
- G. ADA requirements.
- H. Coordination with City's construction representative to determine demolition detail and instructions for existing structures being removed.
- I. Coordination of signage and graphics.

Secoy Architects, Inc. shall:

- A. Provide one set of reproducible drawings and appropriate number of wet signed sets of documents as required for permitting.
- B. Maintain contact with the Project Manager, or City Representative.
- C. Coordinate with the selected design-build mechanical, plumbing, and fire protection/life safety contractors, if required.
- D. Perform final code review with City officials and submit documents for building plan check.

#### FEE AND METHOD OF PAYMENT:

- 1. Client shall compensate Architect for the basic services set forth in this document. If the scope of the project changes or if additional services are requested by the Client then these services will be performed at Standard Hourly Rates.
- Architect shall provide Client with monthly invoices for services rendered and costs advanced. Flat fees will be billed on a percentage of work completed basis for each basic service during the month. Basic service phases:

Phase I-	Schematic Design	\$5,000
Phase II-	Preliminary Design	
	(30 hrs) x \$250, (35 hrs) x \$105;	\$11,175

Phase IV-	Construction Documents:	
Architectural:		\$17,500.00
Electrical Engin	eering:	\$ 3,500.00
Phase V-	Bidding:	\$ 1,500.00
Phase VI-	Construction Administration:	
Architectural:		\$12,500.00
Electrical:		\$ 2,000.00

- 3. Secoy Architects, Inc. shall perform all such work described above in Phase I, Phase II, Phase IV, and Phase V for the **total amount of \$53,175.00**
- 4. Each invoice shall be due and payable upon receipt, and delinquent 30 days after its date. In the event of delinquency, interest shall accrue from the invoice date at the rate of %10 annum. Secoy Architects, Inc. has the right to stop work after 60 days of non payment of the invoice.
- 5. No deductions shall be made from Architect's compensation nor shall Client delay payment on account of claims or losses for which an appropriate court or arbitrator has not held Architect legally liable.
- 6. Either party may terminate this agreement at any time upon 5 days written notice. In the event of termination prior to the completion of the project, for any reason, Client will compensate Secoy Architects, Inc. for the time spent by our staff prior to receipt of written notice of termination.
- 7. In light of the obvious advantage of resolving questions and disputes regarding Architect's billing quickly and while recollections are fresh, Client will notify Architect of any questions or dissatisfaction which it may have regarding any particular invoice within 30 days of the invoice date, and if Client fails to give Architect such notice, then Client will have waived its right to dispute the accuracy and appropriateness of the invoice and the invoice will be binding upon Client.
- 8. A retainer of **NA** will be paid upon the execution of this Agreement and applied to Architect's final invoice.
- 9. Reimbursable expenses include expenses incurred by the Architect in the interest of the Project for:
  - 1. Expense of transportation and mileage reimbursement at \$ .54 per mile and parking fees.
  - 2. Fees paid for securing approval of authorities having jurisdiction over the project.
  - 3. Reproductions & photographic documentation.
  - 4. Postage and handling of drawings and specifications.
  - 5. Renderings, models, and photography requested by the Owner.
  - 6. Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.
  - 7. All re-imbursable expenses will be charged on a cost plus 15% basis.

#### **GENERAL PROVISIONS**

- 1. Architect warrants that all of the services provided by or on its behalf pursuant to this Agreement will be performed with reasonable care, skill and diligence in accordance with generally and currently accepted design professional principles and practices. This warranty is in lieu of all other warranties, either express or implied. In particular, and without limitation, Architect will use its best professional judgment in interpreting and applying the requirements of all laws applicable to the Project such as the Americans with Disabilities Act, but compliance with these laws as they may be eventually interpreted by others cannot be guaranteed. Further, it is understood that when used in conjunction with the providing of services pursuant to this Agreement, such terms as "certify," warrant," "confirm," "assure," or the like do not constitute a guarantee, but rather a representation based on Architect's professional opinion or judgment.
- 2. Architect will coordinate the professional engineering services called for by this Agreement, but Client acknowledges that Architect lack the training and experience necessary to perform or critique said services and that these services will necessarily be provided on an independent contractor basis by duly licensed professional engineering subconsultants. In no event, will Architect have any legal liability for any professional errors or omissions committed by these subconsultants.
- 3. If Client retains or allows the retention on any design/build contractors then such contractor shall be responsible for (1) preparing all the engineering and other drawings and specifications for the components of its design/build contract, (2) complying with the Project requirements and space limitations, (3) coordinating and interfacing with other trades and consultants, and (4) obtaining any required or appropriate approvals from authorities having jurisdiction over the Project. Each design/build contractor shall be the Professional of Record for its portion of work, responsible directly to the Client. Design/build system designs shall be reviewed by Architect only for conformance with the aesthetic aspects and major space limitations of the Project; and Architect will not assume responsibility for the design, installation or performance of the system.
- 4. Architect shall not be responsible for delays beyond its reasonable control, for inaccurate or incomplete information provided to it by Client or other reasonably reliable sources, for site conditions of which it was not actually informed, for hazardous materials or toxic substances at the Project site, for the specification of products or equipment for purposes consistent with the manufactures published literature, for Client's finish materials and equipment decisions, for implementing Client's unlawful design decisions, for the actions or inaction of governmental agencies, or for any failures of the Project's contractors and material suppliers.
- 5. The plans covered by this contract are understood to be those required by the various governing bodies for this type of work as of the date of this agreement. In the event of a material change of policy of these organizations which requires material additional office or field work, the payment for the extra work shall be the subject of an extra charge.
- 6. Ownership of any drawings as instruments of service remains that of Secoy Architects, Inc.

7. All written and promotional materials showing or describing the design by Secoy Architects, Inc. shall contain reference to the design services performed by Secoy Architects, Inc. Secoy Architects, Inc. reserves the right to make reference to their participation in he project in subsequent advertising material with prior client approval. Secoy Architects, Inc. reserves the right to photograph and publicize the design project with prior approval from the Client.

If the foregoing is acceptable, your signature on this proposal to Secoy Architects, Inc. will constitute acceptance of its terms and Secoy Architects, Inc. authority to proceed. It is understood that no changes shall be made except in writing.

I trust that the above services are consistent with your requirements and we look forward to a mutually successful project.

Sincerely,

Accepted:

CLIENT

SECOY ARCHITECTS, INC.

Susan Secoy Jensen Susan Secoy Jensen, AIA

Principal

Ву\_\_\_\_\_

Date:

## HOURLY BILLING RATES FOR PROFESSIONAL SERVICES:

Principal/Project Designer	\$250.00 per hour
Project Manager	\$150.00 per hour
Draftsperson/Cad Operator	\$105.00 per hour
Assistant Designer	\$ 60.00 per hour



# Agenda Item

City Council

Item #: 3.8.	11/9/2021	File #: 21-0557
то:	Honorable Mayor and Members of the City Council	
THRU:	Tom Hatch, Interim City Manager	
FROM:	Susan Galvan, Interim Community Development Director	

# 1. SUBJECT

Historic Property Preservation Agreements (Mills Act Contracts) for 26 qualified historic properties.

## 2. SUMMARY

The Community Development Department Historic Preservation Program received 26 applications for new Mills Act Contracts in the Old Towne and Eichler Historic Districts for the Fall 2021 application period. Staff recommends approval and execution of the contracts.

### 3. RECOMMENDED ACTION

Approve 26 Mills Act Contracts between the City of Orange and the identified property owners for the preservation and rehabilitation of qualified historic properties; and authorize the Mayor and City Clerk to execute the contracts on behalf of the City.

## 4. FISCAL IMPACT

The purpose of the Mills Act Program is to leverage property tax savings to support private investment in the preservation of historic properties.

For the 26 Mills Act applications received in Fall 2021, the City may incur a total reduction of property tax of approximately \$20,179 per year. The actual amount of the property tax reduction under the Mills Act Contract will be determined by the Orange County Office of the Assessor, using a predetermined income-based approach to assessment, considering area rental rates and maintenance costs.

The Mills Act Program requires reinvestment of this property tax reduction in preservation of the historic property through the Rehabilitation Plan (Exhibit D) attached to each contract. The Rehabilitation Plan will generate additional revenues from building permit fees, and the local economy will benefit from specialized work in historic preservation by local building contractors and material suppliers. The investment by property owners in these 26 historic properties totals \$1,850,580 over ten years.

The \$1,000 application fee for each contract offsets the cost of staff review, property inspection, and this public meeting. The \$30 annual fee offsets ongoing costs of administration of the contracts.

# 5. STRATEGIC PLAN GOALS

Goal 5: Recognize, promote and preserve Orange's rich heritage

b. Expand and strengthen processes and practices related to the protection of cultural resources.

## 6. DISCUSSION AND BACKGROUND

Mills Act applications for 26 qualified historic properties were received prior to the August 5, 2021 application deadline. Twelve properties are within the Old Towne Historic District, six properties are in the Eichler Fairmeadows Historic District, six are in the Eichler Fairmeadows Historic District, six are in the Eichler Fairhaven Historic District, and two are within the Eichler Fairhills Historic District.

Staff reviewed the applications and met with each property owner at the historic property to review the proposed Rehabilitation Plan (Exhibit D) attached to the Mills Act Contract. Each Rehabilitation Plan has been tailored to the preservation needs of the specific historic property and has been determined to meet the Mills Act Program requirements and to be in conformance with the relevant design standards for the historic districts.

Each Mills Act property owner agrees to complete the work described in the Rehabilitation Plan. Additional contract conditions include:

- 1 Preserve and rehabilitate the historic property and its character-defining features in conformance with adopted rules and regulations.
- 2 Meet City of Orange Historic Property Maintenance Standards for all buildings, structures, yards and other improvements on the property.
- 3 Agree to property inspections once every five years of the contract term and/or when work is completed to determine compliance with terms of the contract.
- 4 File annual status reports on progress of improvements and repairs and/or any changed conditions of the property.
- 5 Provide a ten-year update of proposed rehabilitation and repair items, 90 days prior to the tenth contract anniversary.
- 6 Meet all other contract terms and conditions as specified in the Historic Property Preservation Agreement.

A summary of each application is provided in Attachment 1 to the Staff Report.

## 7. ATTACHMENTS

- Attachment 1 Table Summary of 26 Mills Act Applications
- Attachment 2 Fall 2021 Applicant Property Photographs
- Attachment 3 Mills Act Contract MAC-378.0-21
- Attachment 4 Mills Act Contract MAC-384.0-21
- Attachment 5 Mills Act Contract MAC-388.0-21
- Attachment 6 Mills Act Contract MAC-389.0-21

<b>m #:</b> 3.8.	11/9/2021	File #: 21-0557
Attachment 7 - Mills	s Act Contract MAC-390.0-21	
Attachment 8 - Mills	s Act Contract MAC-391.0-21	
Attachment 9 - Mills	s Act Contract MAC-392.0-21	
• Attachment 10 - Mi	lls Act Contract MAC-393.0-21	
Attachment 11 - Mi	lls Act Contract MAC-394.0-21	
Attachment 12 - Mi	lls Act Contract MAC-395.0-21	
Attachment 13 - Mi	lls Act Contract MAC-396.0-21	
Attachment 14 - Mi	lls Act Contract MAC-397.0-21	
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Attachment 18 - Mi	lls Act Contract MAC-401.0-21	
Attachment 19 - Mi	lls Act Contract MAC-402.0-21	
Attachment 20 - Mi	lls Act Contract MAC-403.0-21	
Attachment 21 - Mi	lls Act Contract MAC-404.0-21	
Attachment 22 - Mi	lls Act Contract MAC-405.0-21	
Attachment 23 - Mi	lls Act Contract MAC-406.0-21	
Attachment 24 - Mi	lls Act Contract MAC-407.0-21	
Attachment 25 - Mi	lls Act Contract MAC-408.0-21	
• Attachment 26 - Mi	lls Act Contract MAC-409.0-21	
• Attachment 27 - Mi	lls Act Contract MAC-410.0-21	
• Attachment 28 - Mi	lls Act Contract MAC-411.0-21	



# Agenda Item

City Council

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TO:	Honorable Mayor and Members of the City Council	
THRU:	Tom Hatch, Interim City Manager	
FROM:	Susan Galvan, Interim Community Development Director	

# 1. SUBJECT

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## 2. SUMMARY

The Community Development Department Historic Preservation Program received 26 applications for new Mills Act Contracts in the Old Towne and Eichler Historic Districts for the Fall 2021 application period. Staff recommends approval and execution of the contracts.

### 3. **RECOMMENDED ACTION**

Approve 26 Mills Act Contracts between the City of Orange and the identified property owners for the preservation and rehabilitation of qualified historic properties; and authorize the Mayor and City Clerk to execute the contracts on behalf of the City.

## 4. FISCAL IMPACT

The purpose of the Mills Act Program is to leverage property tax savings to support private investment in the preservation of historic properties.

For the 26 Mills Act applications received in Fall 2021, the City may incur a total reduction of property tax of approximately \$20,179 per year. The actual amount of the property tax reduction under the Mills Act Contract will be determined by the Orange County Office of the Assessor, using a predetermined income-based approach to assessment, considering area rental rates and maintenance costs.

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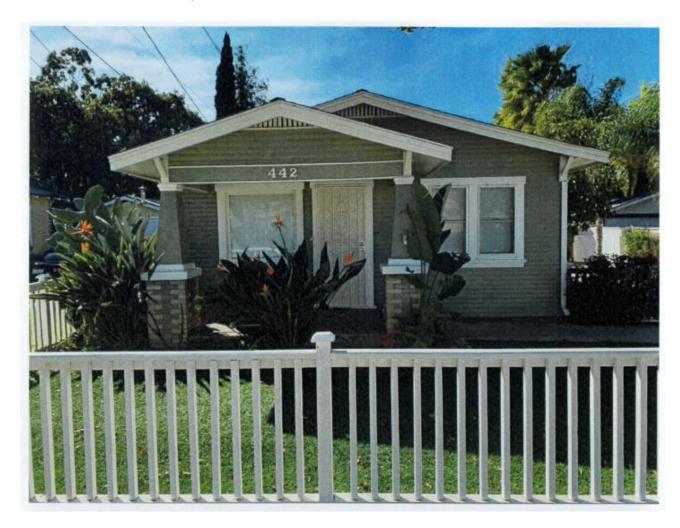
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Attachment 28 - Mill	s Act Contract MAC-411.0-21	

Summary of Mills Act Applications						
Fall 2021						
Contract No.	Property Address	Historic District	Property Owners	Estimate for Rehabilitation Plan	Property Tax Savings over 10 Years	Annual Property Tax Reduction to City
MAC-378.0-21	442 S. Pixley Street	Old Towne	Julisa Martinez	\$49,100	\$49,000	\$665
MAC-384.0-21	1815 N. Winlock Street	Eichler Fairmeadows	Kevin Meredith	\$33,500	\$33,000	\$455
MAC-388.0-21	710 E. Palmdale Avenue	Eichler Fairmeadows	Matthew Levington and Sabrina Shamouni	\$93,000	\$48,592	\$600
MAC-389.0-21	265 N. Grand Street	Old Towne	The Stephen P. Milner Family Trust	\$36,851	\$34,162	\$464
MAC-390.0-21	1801 N. Woodside Street	Eichler Fairmeadows	Dale Shim and Joan Shim	\$32,500	\$31,472	\$427
MAC-391.0-21	884 S. Oakwood Street	Eichler Fairhaven	Daniel Han and Ellina Han	\$95,815	\$87,914	\$1,194
MAC-392.0-21	333 E. Culver Avenue	Old Towne	Matthew Burns and Ryoko Burns	\$71,079	\$65,700	\$892
MAC-393.0-21	1779 N. Winlock Street	Eichler Fairmeadows	Andrea Baratie- Papalini and Pablo Papalini	\$77,500	\$56,580	\$768
MAC-394.0-21	895 S. Oakwood Street	Eichler Fairhaven	Evan Ruppe and Alyson Ruppe	\$90,000	\$72,759	\$988
MAC-395.0-21	151 N. Shaffer Street	Old Towne	Ryan Malloy and Michelle Malloy	\$85,470	\$66,931	\$909
MAC-396.0-21	339 N. Cambridge Street	Old Towne	Vinh Lam and Pamela Yang	\$45,000	\$33,973	\$463
MAC-397.0-21	544 E. Palmyra Avenue	Old Towne	Rick Busch	\$82,500	\$62,547	\$849
MAC-398.0-21	3810 E. Fernwood Avenue	Eichler Fairhaven	Adrian Turner and Thuy Turner	\$61,500	\$61,480	\$835
MAC-399.0-21	819 E. Briardale Avenue	Eichler Fairmeadows	Michelle Partington and Joshua Partington	\$47,000	\$47,000	\$640

Summary of Mills Act Applications						
Fall 2021						
Contract No.	Property Address	Historic District	Property Owners	Estimate for Rehabilitation Plan	Property Tax Savings over 10 Years	Annual Property Tax Reduction to City
MAC-400.0-21	226 E. La Veta Avenue	Old Towne	Edward Breckenridge	\$68,900	\$34,200	\$464
MAC-401.0-21	505 E. Van Bibber Avenue	Old Towne	Jennifer Davis and Jesse Davis	\$60,900	\$60,103	\$816
MAC-402.0-21	522 E. Palm Avenue	Old Towne	Michele Hanson	\$ 37,200	\$32,107	\$436
MAC-403.0-21	871 S. Cedarwood Street	Eichler Fairhaven	Tristian Gonzales and Fiona Gonzales	\$120,990	\$81,086	\$1,101
MAC-404.0-21	1298 N. Linda Vista Street	Eichler Fairhills	John Pack and Amy Hammontree	\$51,175	\$35,378	\$480
MAC-405.0-21	880 S. Woodland Street	Eichler Fairhaven	Scott Penttila	\$93,500	\$92,269	\$1,253
MAC-406.0-21	153 N. Center Street	Old Towne	Carol Tallichet and Trust	\$97,000	\$94,710	\$1,286
MAC-407.0-21	1719 N. Shaffer Street	Eichler Fairmeadows	Alan Lowry and Aimee Lowry	\$41,100	\$40,727	\$613
MAC-408.0-21	460 S. Cambridge Street	Old Towne	Craig McGowan and Shannon McGowan	\$57,500	\$56,888	\$773
MAC-409.0-21	212 E. Chapman Avenue	Old Towne	Al Ricci	\$159,000	\$67,640	\$919
MAC-410.0-21	828 S. Oakwood Street	Eichler Fairhaven	Romel Bhullar and Tahira Bhullar	\$127,000	\$104,180	\$1,415
MAC-411.0-21	5111 E. Valencia Drive	Eichler Fairhills	Adrian Turner and Thuy Turner	\$35,500	\$34,890	\$474

Mills Act Contract Applications – Fall 2021 Applicant Property Photographs

#### MAC-378.0-21 – 442 S. Pixley Street



#### MAC-384.0-21 - 1815 N. Winlock Street



#### MAC-388.0-21 - 710 E. Palmdale Avenue



#### MAC-389.0-21 -265 N. Grand Street



#### MAC-390.0-21 - 1801 N. Woodside Street



#### MAC-391.0-21 - 884 S. Oakwood Street



#### MAC-392.0-21 - 333 E. Culver Avenue



#### MAC-393.0-21 - 1779 N. Winlock Street



#### MAC-394.0-21 - 895 S. Oakwood Street



#### MAC-395.0-21 - 151 N. Shaffer Street



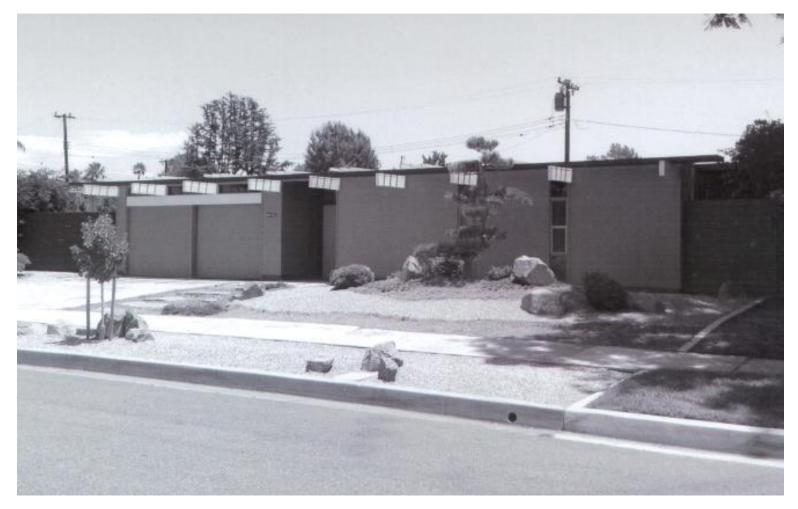
#### MAC-396.0-21 - 339 N. Cambridge Street



#### MAC-397.0-21 - 544 E. Palmyra Avenue



#### MAC-398.0-21 - 3810 E. Fernwood Avenue



#### MAC-399.0-21 - 819 E. Briardale Avenue



#### MAC-400.0-21 - 226 E. La Veta Avenue



#### MAC-401.0-21 - 505 E. Van Bibber Avenue



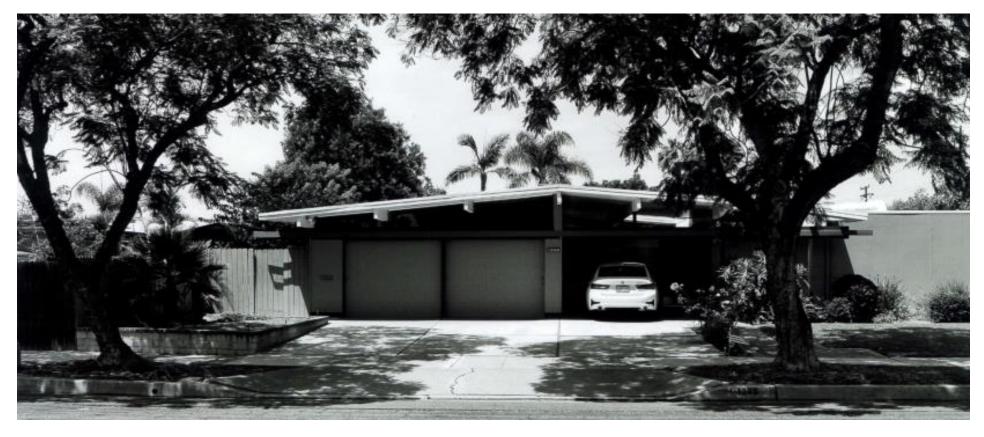
#### MAC-402.0-21 - 522 E. Palm Avenue



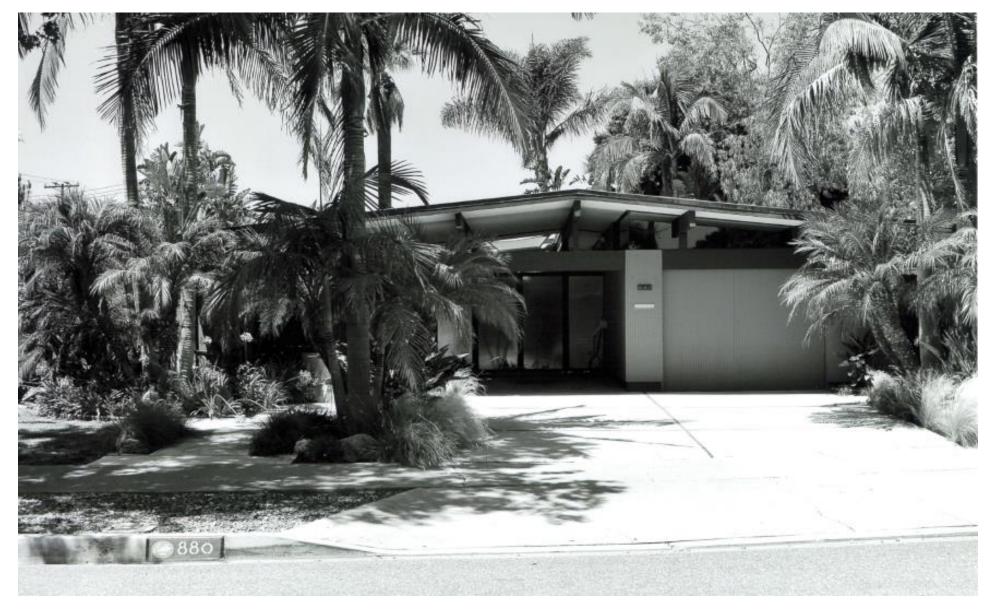
#### MAC-403.0-21 -871 S. Cedarwood Street



#### MAC-404.0-21 -1298 N. Linda Vista Street



#### MAC-405.0-21 - 880 S. Woodland Street



### MAC-406.0-21 - 153 N. Center Street



### MAC-407.0-21 - 1719 N. Shaffer Street



# MAC-408.0-21 - 460 S. Cambridge Street



### MAC-409.0-21 - 212 E. Chapman Avenue



### MAC-410.0-21 - 828 S. Oakwood Street



### MAC-411.0-21 - 5111 E. Valencia Drive



RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 442 S. Pixley Street APN: 041-141-19 Mills Act Contract Number: 378.0-21

### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Julisa Alicia Martinez Maldonado, a married woman as her sole and separate property ("Owner"), with reference to the following:

### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>442 S. Pixley Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>04-141-19</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Julisa Alicia Martinez Maldonado
Attn.: City Clerk	304 N. Berniece Drive
300 E. Chapman Avenue	Anaheim, CA 92801
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

### [Remainder of page intentionally left blank; signatures on next page]

# IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Julisa Alicia Martinez Maldonado

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

By:

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

### EXHIBIT "A"

### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 16 in Block B if Trach No. 545, in the City of Orange, County of Orange, State of California, as per map recorded in Book 18, Page 11 of Miscellaneous Maps, in the Office of the County Recorder of said County.

[APN 041-141-19]

### EXHIBIT "B"

### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

### EXHIBIT "C"

# <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Upgrade of plumbing system throughout the house to meet current building code standards.	\$4,500	2021
2.	Termite remediation and repair as recommended in termite inspection report dated 11/9/2020.	\$2,500	2021
3.	Paint the exterior of the house.	\$3,600	2021
4.	Seismic retrofit of house foundation.	\$7,000	2024
5.	Maintenance of original interior wood floors, including repair and refinishing as needed.	\$5,000	2026
6.	Replace existing roof with new composition shingle roof.	\$11,000	2028
7.	Plumbing inspection and repair as needed, including addressing any clogs or root intrusions.	\$3,300	2029
8.	Paint the exterior of the house.	\$9,000	2030
9.	Professional termite inspection, including treatment and repairs as recommended.	\$3,200	2030
TOTAL		\$49,100	

# 442 S. Pixley Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency	Primary #	30-158885			
DEPARTMENT OF PARKS AND RECREATION		038251, 112381			
PRIMARY RECORD		DRA			
Other Listings:	NRHP Status Code				
Review Code:	Reviewer:	Date:			
Page 1 of 3 *Resource Na (Assigned by		APN_041-141-19			
P1. Other Identifier: See B13 Remarks					
	Unrestricted				
	nd (P2b and P2c or P2d. Attach a location map as ne				
	ate: T; R;	1/4 of;B.M.			
C. Address: 442 - 444 S PIXLEY	ST , #				
d. UTM: (Give more than one for large and/or linear resources)	Zone ' mE/	mN			
e. Other Locational Data:					
*P3a. Description: (Describe resource and its major elements. Inc	lude design, materials, condition, alterations, size, setting	g, and boudnaries. Continues on Pg.3.)			
Materials: Frame - Wood siding					
Single-story clapboard bungalow with dou	ble, front-facing gables. Fron	tmost gable forms entry porch			
overhang and is supported by elephantine	e piers embellished with ornamen	tal brick bases.			
*P3b. Resource Attributes: (HP2) Single famil (List attributes and codes)	y property				
*P4. Resources Present: ✓ Building Struct	ure 🗌 Object 🔲 Site 🖌 Element of	f District District Other (Isolates, etc.)			
		P5b. Description of Photo: 2005			
		(View, date, accession #)			
	A. A.	*P6. Date Constructed/ Age and Source:			
		1923			
A State of the second					
		✓ Historic  Prehistoric  Both			
		*P7. Owner and Address:			
in the second	and the second	*P8: Recorded by: (Name, affiliation, and address)			
A CONTRACTOR OF THE OWNER OWNER OF THE OWNER	All state of the second se	D. Gest, P. LaValley, D. Matsumoto			
		Charles I. J. ach 's and an			
		Chattel Architecture 13417 Ventura Blvd.			
	A second s	Sherman Oaks, CA 91423			
		Sherman baks, on S1425			
		*P9. Date Recorded:			
*P11. Report Citation: (Cite survey report and other sources,		March, 2005			
Orange County Assessor Records (2005). ( Historic Resources Survey. AEGIS (1991)		*P10. Survey Type: (Describe)			
Update. Heritage Orange County, Inc. (19	82) Orange Historic Survey.	Reconnaissance			
	tion Map Continuation Sheet(s)	Building, Structure, and Object Record			
	ict Record Linear Feature Record	Milling Station Record Rock Art Record			
DPR 523A (1/95)	ograph Record Other (List):	*Required Information			

State of California DEPARTMENT OI BUILDING, ST	PARKS AND R	0,	Primary # HRI # *NRHP Status Code	30-158885 038251, 112381 1D
Page 2 of 3		*Resource Name or #: (Assigned by Recorder)	PIXLEY_S_442-444_	_APN_041-141-19
B1. Historic Name:	Unknown			
B2. Common Name				
B3. Original Use:	RES	B4. Present Use:	RES	
*B5. Architectural S	tyle: Bungalc	W		
*B6. Construction H	istory: (Constructio	n date, atlerations, and date of alterations)	Date of Construction:	1923 V Historic Prehistoric Both
*B7. Moved? 🕑 N *B8. Related Feature *B9. Architect or Bu	es:	nknown <b>Date:</b>	Original Location:	
*B10. Significance:	Theme: A	rchitecture Area: C	ity of Orange Pro	perty Type:
•		ne: Interwar Development hitectural context as defined by theme, per		Applicable Criteria: AC ddress integrity. Continues on Pg.4.)
Structural Integrit	Good Cond	ition - No apparent chan	ge to original stru	cture.
·····	Accessory str site.	ucture or major addition	n that compromises t	the scale or association with the
Opportunities:				

B11. Additional Resource Attributes: (List attributes and codes)

#### \*B12. References:

Orange Daily News.

B13. Remarks: (Continues on Status change since	Py.s.)	(Sketch Map with North arrow required.)
Only 442 S. Pixley i the rear, non-histor	s the contributing building. 444 S. Pixley is ic building.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September, 2005	
(This space reserved for official comm	ents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial	30-158885 038251, 112381 ORA	
Page 3 of 3		*Resource Name or a (Assigned by Recorde		PIXLEY_S_442-444_	_APN_041-141-19
Recorded by:					
D. Gest, P. LaValley		tsumoto		Date Record	ed: March, 2005
Chattel Architecture					
13417 Ventura Blvd.			Continua	tion Update	
Sherman Oaks, CA 91	423				
Years Surveyed:	1982,	1991, 2005		Description of Phot	<b>0:</b> 1991
Listed in National Register:	1997				
General Plan:	LDR	# of Buildings:	2	-	
Planning Zone:	R-3	# of Stories:	2	and the second	
Lot Acre:		# of Units:	2	Mr. B. Mink	
Principal Building Sqft:	761	_			
B6. Construction History (Co	ontinued f	irom Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

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RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 1815 N. Winlock Street APN: 374-212-03 Mills Act Contract Number: 384.0-21

### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Kevin Innis Meredith II, a Single Man ("Owner"), with reference to the following:

### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>1815 N. Winlock Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>374-212-03</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from July 13, 2021 to and including July 13, 2031.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange Attn.: City Clerk 300 E. Chapman Avenue Orange, CA 92866 Kevin Meredith 1815 N. Winlock Street Orange, CA 92865

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

### [Remainder of page intentionally left blank; signatures on next page]

# IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Kevin Innis Meredith II

### "CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

By: \_\_\_\_\_\_ Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk

Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

### EXHIBIT "A"

# **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 105 of Tract 3978, as per map recorded in Book 140, Page(s) 17-18-19 in the Office of the County Recorder of said County.

[APN 374-212-03]

### EXHIBIT "B"

### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

### EXHIBIT "C"

### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Paint exterior of the house	\$7,000	2021
2.	Replace water and sun damaged siding on the south wall of the atrium.	\$2,000	2022
3.	Replace front entry glazing panel with new Mistlite glass panel to restore original design feature.	\$1,500	2022
4.	Tune up and repair of radiant heat floor system.	\$1,000	2022
5.	Regular maintenance and patching of existing built-up roof system.	\$1,000	2023
6.	Install plumbing clean-out for kitchen and master bath.	\$1,000	2024
7.	New slab front door with round Eichler door knob and lock set.	\$1,500	2024
8.	New Eichler vertical groove wood panels for garage doors to replace panels with large cutout holes.	\$2,000	2025
9.	Relocate electrical box to comply with current code requirements.	\$2,500	2025
10.	Regular maintenance and patching of existing built-up roof system.	\$1,000	2026
11.	Replace bedroom and bathroom windows on north elevation, which have significant rust damage, with new windows in compliance with the Orange Eichler Design Standards.	\$2,000	2026
12.	Paint exterior of the house	\$7,000	2027
13.	Tune up and repair of radiant heat floor system.	\$1,000	2028
14.	Regular maintenance and patching of existing built-up roof system.	\$1,000	2029
15.	Replace deteriorated siding on south-facing wall of rear elevation with Eichler vertical groove wood siding to match existing.	\$2,000	2029
TOTAL		\$33,500	

### 1815 N. Winlock Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

	The Resources Agency ARKS AND RECREATION	Primary # HRI #	
PRIMARY RECO		Trinomial	ORA
	Other Listin no.	NRHP Status Code	<u>3D</u>
	Other Listings:	Reviewer:	Date:
Page 1 of 3	*Resource Name or #. (Assigned by Recorder)		PN_374-212-03
P1. Other Identifier:	Fairmeadow Tract		
*P2. Location:	Not for Publication	tricted	
*a. County:		and P2c or P2d. Attach a location map as	
			1/4 of1/4 of Sec;B.M.
	5 - N WINLOCK	ST ' <b>mE/</b>	,# City: <u>Orange</u> Zip: <u>92865</u>
e. Other Locationa	an one for large and/or linear resources) Zone	me/	mN
e. other Locationa			
	cribe resource and its major elements. Include design	n, materials, condition, alterations, size, set	ting, and boudnaries. Continues on Pg.3.)
Materials:			
*P3b. Resource Attribut (List attributes and or *P4. Resources Presen			of District District Other (Isolates, etc.) P5b. Description of Photo: 2005 (View, date, accession #) *P6. Date Constructed/ Age and Source: 1964 c Historic Prehistoric Both *P7. Owner and Address:
	BI5		* <b>P8: Recorded by:</b> (Name, affiliation, and address) R. Chattel Chattel Architecture 13417 Ventura Blvd. Sherman Oaks, CA 91423
* <b>P11. Report Citation:</b> Orange County Ass	(Cite survey report and other sources, or enter "no sessor Records (2005). Chattel		* <b>P9. Date Recorded:</b> January 2005
Historic Resource			*P10. Survey Type: (Describe) Reconnaissance
A	IONE  Location Mag    rchaeological Record  District Reco    rtifact Record  Photograph F	rd Linear Feature Reco	rd Milling Station Record Rock Art Record
DPR 523A (1/95)			*Required Information

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State of California - The		Primary #	
DEPARTMENT OF PARK		HRI #	
BUILDING, STRUCT	URE, AND OBJECT RECORD	*NRHP Status Code	3D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	WINLOCK_N_1815	APN_374-212-03
B1. Historic Name: Unk	nown		
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style:	Mid-Century Modern		
*B6. Construction History:	(Construction date, atlerations, and date of alterations	Date of Construction:	. <u>1964</u> Historic Prehistoric Both
	s installed over garage. Drive door. New garage doors. In 20		ced. Curvilinear red brick planters atio cover (#1404-062).
* <b>B7. Moved?</b> 🖌 No 🗌 Ye	es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
	Eichler Homes		
*B9. Architect or Builder:			
*B10. Significance: The	eme: <u>Architecture</u> Area:	City of Orange Pr	operty Type: Residence
•	Eichler Tract (c. 1959 - 1965)	riad and recorrection access. Also	Applicable Criteria: C
	orical or architectural context as defined by theme, pe cellent Condition - Medium lev		
Site Integrity:			
one integrity.			
Opportunities			
B11. Additional Resource	Attributes: (List attributes and codes)		
*B12. References:			
Orange Daily News.			
B13. Remarks: (Continues on	<b>Pg.3.)</b> 1991 Survey: Not previously s	uruouod	(Sketch Map with North arrow required.)
Status change since	issi Survey. Not previously s	urveyeu.	
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:			
(This space reserved for official comm			-
DPR 523B (1/95)			*Required Information
			Required mornation

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3		*Resource Name or #: (Assigned by Recorder)	WI	NLOCK_N_1815AP	N_374-212-03
Recorded by:					
R. Chattel				Date Recorde	ed: January 2005
Chattel Architectu	re				
13417 Ventura Blvd.			Continuati	ion 🗌 Update	
Sherman Oaks, CA	91423				
Years Surveyed:	2005,	2015	I	Description of Photo	):
Listed in National Registe	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1927	# of Units:	1		
Principal Building Sqft:	2139	_			
B6. Construction History (	Continued f	rom Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 710 E. Palmdale Avenue APN: 374-227-04 Mills Act Contract Number: 388.0-21

### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Matthew Levington and Sabrina Shamouni, husband and wife as joint tenants ("Owner"), with reference to the following:

### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>710 E. Palmdale Avenue</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>374-227-04</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Matthew Levington and Sabrina Shamouni
Attn.: City Clerk	710 E. Palmdale Avenue
300 E. Chapman Avenue	Orange, CA 92865
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

### [Remainder of page intentionally left blank; signatures on next page]

### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Matthew Levington

Dated: \_\_\_\_\_, 2021

Sabrina Shamouni

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

### EXHIBIT "A"

### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 45 of Tract No. 3978, in the City of Orange, County of Orange, State of California, as per map recorded in Book 140, Page(s) 17, 18, and 19, inclusive of Miscellaneous Maps, records of Orange County, California.

[APN 374-227-04]

### EXHIBIT "B"

### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

### EXHIBIT "C"

### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Install new TPO Vinyl Roof system.	\$43,000	2021
2.	Install new ground mounted HVAC system for the west side of the house, in compliance with the Orange Eichler Design Standards.	\$25,000	2021
3.	Install new sewer main line cleanout and liner system to address plumbing system leaks.	\$15,000	2021
4.	Pour new concrete driveway in the same location and configuration as the original driveway.	\$10,000	2022
TOTAL		\$93,000	

### 710 E. Palmdale Avenue

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California	ornia - The Resources Agency	Primary #			
	T OF PARKS AND RECREATION	HRI # Trinomial	ORA		
PRIMARY	RECORD	NRHP Status Code	3D		
	Other Listings:				
	Review Code:	Reviewer:	Date:		
Page 1 of	3 *Resource Name or (Assigned by Record		PN_374-227-04		
P1. Other Ident	ifier: Fairmeadow Tract				
*P2. Location:	Not for Publication	estricted			
*a. County:		P2b and P2c or P2d. Attach a location map as			
			1/4 of;B.M.		
	710 - E PALMDALE	AVE	,# City: <u>Orange</u> Zip: <u>92865</u>		
	e more than one for large and/or linear resources) Zone	' mE/	mN		
e. Other Loc	cational Data:				
*P3a. Descriptio	n: (Describe resource and its major elements. Include de	sign, materials, condition, alterations, size, set	ting, and boudnaries. Continues on Pg.3.)		
Materials:					
Model LA-11	4R				
*P3b. Resource (List attribu *P4. Resources	Attributes: (HP2) Single family pr tes and codes) Present:  Building Structure		<ul> <li>of District District Other (Isolates, etc.)</li> <li>P5b. Description of Photo: 2005 (View, date, accession #)</li> <li>*P6. Date Constructed/ Age and Source: 1964 c</li> </ul>		
			Historic Prehistoric Both		
			* <b>P8: Recorded by:</b> (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner City of Orange 300 E. Chapman Ave.		
			Orange, CA 92866		
*P11. Report Cit	(,,,,,,,	,	* <b>P9. Date Recorded:</b> June 2015		
	ty Assessor Records (2005). Chatt sources Survey.	CI AICHILECLUIE (2003)	* <b>P10. Survey Type:</b> (Describe) Reconnaissance		
*Attachments:	<ul> <li>NONE</li> <li>Archaeological Record</li> <li>District Re</li> <li>Artifact Record</li> <li>Photograp</li> </ul>	cord Linear Feature Reco			
DPR 523A (1/95)			*Required Information		

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State of California - T DEPARTMENT OF PARTMENT OF PARTMENT OF PARTMENT	ARKS AND R	•••	Primary # HRI # *NRHP Status Code	3D
Page 2 of 3 B1. Historic Name:	Unknown	*Resource Name or #: (Assigned by Recorder)	PALMDALE_E_710A	PN_374-227-04
B1. Mistoric Name:	UIIKIIOWII			
B3. Original Use:	RES	B4. Present Use:	RES	
*B5. Architectural Style	: Mid-Ce	ntury Modern		
*B6. Construction Histo	ory: (Constructio	n date, atlerations, and date of alterations	Date of Construction:	1964 Historic Prehistoric Both
*B7. Moved? ✔ No *B8. Related Features:	]Yes 🗌 U	nknown Date:	Original Location:	
			,	
*B9. Architect or Builde		er Homes - Claude Oaklan		
*B10. Significance:	_		City of Orange Pro	perty Type:
•		Tract (c. 1959 - 1965) hitectural context as defined by theme, per	riod, and geographic scope. Also a	ddress integrity. Continues on Pg.4.)
Structural Integrity:	Excellent	Condition - Low level	of alteration as of	2005.
Site Integrity:				
Opportunities				
B11. Additional Resour	co Attributo	St a		
*B12. References:		- (LIST ATTIDUTES AND CODES)		
	. Eichler	Tract Brochures and mis	cellaneous Eichler m	aterials from the Orange Public

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
Status change since	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	ents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3	×	*Resource Name or (Assigned by Record		PALMDALE_E_710AP	`N_374-227-04
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plar	ner	Date Recorde	ed: June 2015
City of Orange	City of Orange				
300 E. Chapman Ave	•			<ul> <li>Continuati</li> </ul>	ion 🗌 Update
Orange, CA 92866					
Years Surveyed:	2005,	2015		Description of Photo	):
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1	,	
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1931	# of Units:	1		
Principal Building Sqft:	2164				
B6. Construction History (	Continued fr	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 265 N. Grand Street APN: 039-243-04 Mills Act Contract Number: 389.0-21

### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Stephen P. Milner and Ellen S. Milner, Co-Trustees of the Stephen P. Milner Family Trust dated May 26, 2011 ("Owner"), with reference to the following:

### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>265 N. Grand Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>039-243-04</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	The Stephen P. Milner Family Trust
Attn.: City Clerk	19 N. Stonington Road
300 E. Chapman Avenue	Laguna Beach, CA 92651
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

### [Remainder of page intentionally left blank; signatures on next page]

### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Stephen P. Milner, Co-Trustee

Dated: \_\_\_\_\_, 2021

Ellen S. Milner, Co-Trustee

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

APPROVED AS TO FORM:

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 18, Block "A" of the "Bonnie Brae Tract" in the City of Orange, County of Orange, State of California, as per map recorded in Book 4, Page 8 of Miscellaneous Maps, in the office of the County recorder of Said County.

[APN 039-243-04]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Repair fireplace hearth and regular maintenance of chimney.	\$1,500	2021
2.	New wood frame window screens for all window openings.	\$5,000	2021
3.	Install new carriage-style garage door and opener for detached carriage house.	\$4,500	2021
4.	Replace rain gutters of shed side of roof facing the side yards to prevent water backsplash onto the foundation.	\$4,000	2021
5.	Repaint of the exterior of the house and detached carriage house.	\$5,685	2021
6.	Install gravel in planter beds next to house, drip system added in front and back beds, 5 valves and timer.	\$6,666	2021
7.	Repair of and repointing of molded concrete block column on the front porch.	\$2,500	2027
8.	Repair concrete in driveway at back portion of driveway	\$5,500	2028
9.	Install handrail for front porch steps in compliance with the Historic Preservation Design Standards for Old Towne.	\$1,500	2029
TOTAL		\$36,851	

## 261/265 N. Grand Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The R	esources Agency		Primary #	30-159401	
DEPARTMENT OF PARKS	0,		HRI #	038767	
PRIMARY RECORD		Trinomial	ORA		
			NRHP Status Code	1D	
	Other Listings:				-
	Review Code:		Reviewer:		Date:
Page 1 of 3	*Resource Nai (Assigned by		GRAND_N_265APN_	039-243-04	
P1. Other Identifier:					
*P2. Location: No *a. County:		Unrestricted nd (P2b and P2c or	P2d. Attach a location map as	necessary.)	
*b. USGS 7.5' Quad:		ate:	T ; R ;		fSec;B.M
<b>c. Address:</b> 265 -	N GRAND		ST	,# City: 0	range <b>Zip:</b> 92866
d. UTM: (Give more than one	or large and/or linear resources)	Zone	' mE/	mN	·
e. Other Locational Data					
P3a. Description: (Describe real	source and its major elements. Incl	lude design, materials,	condition, alterations, size, set	ting, and boudnaries. Contin	ues on Pg.3.)
Materials: Frame - Ask	estos siding				
A single-story bungal present on the front shingles. One-half of	portion of the roof of the front facade	<ol> <li>The origin is recessed b</li> </ol>	hal siding has sin Deneath the main n	ice been covered	with asbestos
part transomed window	s are present on th	e front facad	de.		
P3b. Resource Attributes:	(HD2) Single famil	v property			
(List attributes and codes)	(III2) bingic iamii	y propercy			
P4. Resources Present:	Building Struct	ure 🗌 Object	Site 🖌 Element	of District Distric	ct Other (Isolates, etc.
				P5b. Description (View, date, acces	
				(view, date, acces	5001 #)
	0 e			P6. Date Constru	cted/ Age and Source:
Carlos Carlos Andres	<b>H</b>				1915 c
		-		✓ Historic	Prehistoric Both
	-		1	*P7. Owner and A	ddress:
1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -		The second second			
			MAYEAS	*D9: Decorded by	
			STAR STAR	D. Gest, P. 1	(Name, affiliation, and address)
		- Henry -		Matsumoto	Lavailey, D.
	5.0228			Chattel 2 1	itesture
				Chattel Arch	
				13417 Ventura Sherman Oaks	
				Sherman Oaks	, CA 91423
				*P9. Date Recorde	ed:
- ,	survey report and other sources, o	,		May, 2005	
Orange County Assesso Historic Resources Su				*B40.0	
Update. Heritage Oran				*P10. Survey Type Reconnaissan	( )
-		-	-	Reconnaissan	
Attachments: NONE	Loca	tion Map	Continuation Sheet(s	) 🗹 Building, Struct	ture, and Object Record
		ict Record	Linear Feature Reco		Record Rock Art Record
		ograph Record	Other (List):		
DPR 523A (1/95)					*Required Information

DEPARTMENT OF PARI BUILDING, STRUC		HRI # • *NRHP Status Code	038767 1D
	, , , , , , , , , , , , , , , , , , , ,		
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	GRAND_N_265APN_	_039-243-04
B1. Historic Name: Wa	lter and Ella Kogler House		
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style:	Bungalow		
*B6. Construction History	(Construction date, atlerations, and date of alteration	Dons) Date of Construction:	Historic □ Prehistoric □ Both
The original siding	has since been covered with a	asbestos shingles.	
* <b>B7. Moved? 🖌</b> No 🗌 Y	∕es □ Unknown <b>Date:</b>	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	Unknown		
*B10. Significance: Th	eme: Architecture Area:	City of Orange Pr	operty Type: Residence
Period of Significance:	Old Towne: Early Settlement (	c. 1870 - 1920)	Applicable Criteria: AC
	storical or architectural context as defined by theme,		
<b>3</b> ,	ood Condition - Minor and reve	ersible or appropriat	e changes to original structure.
Site Integrity:			
Opportunities:			
	nal, owners were Walter and E clerk with the First National		er was with the Kogler and Borchard
B11. Additional Resource	Attributes: (List attributes and codes)		
* <b>B12. References:</b> Orange Daily News.			
B13. Remarks: (Continues of			(Sketch Map with North arrow required.)
Status change since	1991 Survey: None.		
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:	September, 2005		
(This space reserved for official com	ments.)		+
DPR 523B (1/95)			*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial	30-159401 038767 ORA	
Page 3 of 3	:	*Resource Name or (Assigned by Recorded		GRAND_N_265APN_	039-243-04
Recorded by:					
D. Gest, P. LaVall	ley, D. Mat	sumoto		Date Record	led: May, 2005
Chattel Architectu					
13417 Ventura Blvo				Continua	tion Update
Sherman Oaks, CA	91423				
Years Surveyed:	1982,	1991, 2005		Description of Phot	to: 1991
Listed in National Registe	er: 1997				
General Plan:	LDR	# of Buildings:	2		X Hogener
Planning Zone:	R-3	# of Stories:	2		
Lot Acre:	0.1488	# of Units:	3		
Principal Building Sqft:	2272				
B6. Construction History	(Continued f	rom Pg.2):		2	

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

## EXHIBIT "F"

# **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 1801 N. Woodside Street APN: 374-213-09 Mills Act Contract Number: 390.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Dale Sup Shim and Joan Sun Shim, as Trustees of The Shim Living Trust Established September 1, 2011 ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>1801 N. Woodside Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>374-213-09</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Dale Sup Shim and Joan Sun Shim
Attn.: City Clerk	1801 N. Woodside Street
300 E. Chapman Avenue	Orange, CA 92865
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Dale Sup Shim, Trustee

Dated: \_\_\_\_\_, 2021

Joan Sun Shim, Trustee

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 116 of Tract 3978 in the City of Orange, County of Orange, State of California, as per map recorded in Book 140, Page(s) 17, 18, and 19, inclusive of Miscellaneous Maps, records of Orange County, California.

[APN 372-213-09]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Termite fumigation and recommended in the termite inspection report dated 3/5.2021.	\$2,000	2022
2.	Replace front door hardware with new Eichler round escutcheon plate and lock set.	\$500	2024
3.	Installation of new torch down roof system, including necessary modifications to electrical wiring, termite remediation, roof slope, and wood trim repairs as needed.	\$30,000	2027
TOTAL		\$32,500	

## 1801 N. Woodside Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency		Primary # HRI #		
DEPARTMENT OF PARKS AND RECREATION PRIMARY RECORD		Trinomial	ORA	
PRIMART RECORD		NRHP Status Code	3D	
Other Listings:				
Review Code:		Reviewer:	Dat	e:
Page 1 of 3 *Resource (Assigned	Name or #: d by Recorder)	WOODSIDE_N_1801A	PN_374-213-09	
P1. Other Identifier: Fairmeadow Tract				
<b>*P2. Location:</b> Not for Publication	<ul> <li>Unrestricted</li> </ul>			
*a. County: Orange		r P2d. Attach a location map as n		
*b. USGS 7.5' Quad:			_ 1/4 of 1/4 of Sec	;;B.M.
c. Address: 1801 - N WOODSIDE		ST , mF/	# City: Orange	e <b>Zip:</b> 92865
d. UTM: (Give more than one for large and/or linear resource	es) Zone	' mE/	mN	
e. Other Locational Data:				
*P3a. Description: (Describe resource and its major elements.	Include design meterial	a condition alterations aize activ	and houdbarian Continues on	
Matala			ig, and boudnaries. Continues on	Pg.3.)
Materials: Model LJ-144				
MODEL TO 144				
(List attributes and codes) *P4. Resources Present: ✓ Building Str	ucture 🗌 Object	Site Element of	of District District P5b. Description of Ph (View, date, accession #)	oto: 2014
The second se			*P6. Date Constructed/	•
	- Temperature		Historic Pre	ehistoric 🗌 Both
			*P7. Owner and Addres	s:
	5		* <b>P8: Recorded by:</b> (Nar Marissa Moshier, Preservation Plar	Historic
	and the second se	A CONTRACTOR OF A CONTRACT	City of Orange	
	4		300 E. Chapman Av	ve.
			Orange, CA 92866	6
A CONTRACT OF A	The second second			
*P11. Report Citation: (Cite survey report and other source	(		*P9. Date Recorded:	
*P11. Report Citation: (Cite survey report and other source Orange County Assessor Records (2005).		tecture (2005)	June 2015	
Historic Resources Survey.		,	*P10. Survey Type: (Der Reconnaissance	scribe)
*Attachments: NONE Lo	ocation Map	<ul> <li>Continuation Sheet(s)</li> </ul>	<ul> <li>Building, Structure, a</li> </ul>	and Object Record
	istrict Record	Linear Feature Record	•	rd Rock Art Record
	hotograph Record	Other (List):		

\*Required Information

\_\_\_\_\_

DPR 523A	(1/95)
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DEPARTMENT OF P	The Resources Agency ARKS AND RECREATION	Primary # HRI #	25
BUILDING, STRU	JCTURE, AND OBJECT RECORD	*NRHP Status Code	<u>3D</u>
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	WOODSIDE_N_1801_	_APN_374-213-09
B1. Historic Name:	Unknown		
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style	Mid-Century Modern		
*B6. Construction Hist	ory: (Construction date, atlerations, and date of alterations	Date of Construction	: 1964
In 1993, atrium e since been remove		over gable, matchi	ng gable's pitch (#B31697). This has
billee been lemove			
* <b>B7. Moved?</b> ✔ No [	Yes Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Build	er: Eichler Homes - A. Quincy Jon	es	
	~ ~ 1		onorty Tyme, Desidence
*B10. Significance:		City of Orange Pr	operty Type:
•	<b>e:</b> <u>Eichler Tract (c. 1959 - 1965)</u> of historical or architectural context as defined by theme, per	riod, and geographic scope. Also	Applicable Criteria: C
	Excellent Condition - Low level		
Site Integrity:			
Opportunities			
	rce Attributes: (List attributes and codes)		
* <b>B12. References:</b> Orange Daily News Library.	. Eichler Tract Brochures and mis	cellaneous Eichler	materials from the Orange Public
<b>B13. Remarks:</b> (Continu Status change sir	es on Pg.3.) ace 1991 Survey: Not previously s	urveyed.	(Sketch Map with North arrow required.)

*B14. Evaluator:	Marissa Moshier, City of Orange	
*Date of Evaluation:	June 2015	
(This space reserved for official comm	nents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3	Page 3 of 3 *Resource Name or #: (Assigned by Recorder)			NOODSIDE_N_1801A	PN_374-213-09
Recorded by:					
Marissa Moshier, Historic Preservation Planner				Date Recorde	d: June 2015
City of Orange					
300 E. Chapman Ave.				Continuati	on 🗌 Update
Orange, CA 92866					
Years Surveyed:				Description of Photo	<b>2</b> 005
Listed in National Registe	er:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.2031	# of Units:	1		MAR AND AND AND
Principal Building Sqft:	2029	_		7	
B6. Construction History	(Continued f	rom Pg.2):			
				Rep 1	

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

## EXHIBIT "F"

# **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 884 S. Oakwood Street APN: 094-123-11 Mills Act Contract Number: 391.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Daniel Ky Woong Han and Ellina Haeryong In Han, husband and wife as community property with rights of survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>884 S. Oakwood Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>094-123-11</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Daniel Han and Ellina Han
Attn.: City Clerk	884 S. Oakwood Street
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

## [Remainder of page intentionally left blank; signatures on next page]

## IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Daniel Ky Woong Han

Dated: \_\_\_\_\_, 2021

Ellina Haeryoung In Han

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

## EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 125, of Tract 3545, in the City of Orange, as per map recorded in Book 125, Pages 1 through 5 inclusive of Miscellaneous Maps, if the office of the County Recorder of Orange County, California, subject to restrictions, reservations, easements, covenants, oil, gas, or mineral rights of record, if any.

[APN 094-123-11]

#### EXHIBIT "B"

## SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Recoat of existing foam roof system, including patch and respray with new SPF coating.	\$11,000	2021
2.	Install new seismic shear wall in kitchen area, tying together concrete foundation slab and roof structure.	\$23,500	2021
3.	Fumigation and wood repair as recommended in the termite inspection report dated 4/13/2021.	\$3,720	2021
4.	Paint the exterior of the house.	\$10,000	2021
5.	Repair or replace deteriorated wood window and door trims as needed.	\$5,900	2021
6.	Asbestos abatement of interior walls and flooring, replacement of impacted interior drywall	\$13,295	2021
7.	Restore original appearance of the concrete block fireplace and hearth.	\$5,500	2021
8.	Replace 2x broken panes of glass with new single-pane tempered glass.	\$750	2021
9.	Electrical updates to bring house up to current building code requirements, including new GFCI outlets in kitchen and bathrooms, dedicated circuits for kitchen appliances, and replacing 3-way switch in the kitchen/den area.	\$6,100	2021
10.	Plumbing updates to bring house up to current building code requirements, including addressing slow drainage in the kitchen and bathrooms and replacing corroded sink drain in the master bathroom.	\$10,250	2021
11.	Replace dark reflective tempering film on all windows with new clear tempering film.	\$4,250	2021
12.	Add hardwired smoke and CO detectors per city approved plans	\$1,550	2021
TOTAL		\$95,815	

# 884 S. Oakwood Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

	rnia - The Resources Agency OF PARKS AND RECREATION ECORD	Primary # HRI # Trinomial NRHP Status Code	ORA 3D
	Other Listings: Review Code:	Reviewer:	Date:
Page 1 of 3	(Assigned by Recorder		_094-123-11
*P1. Other Identif *P2. Location: *a. County:	Fairhaven Tract       Not for Publication       Orange       and (P2)	stricted b and P2c or P2d. Attach a location map as n	
*b. USGS 7.5'	Quad: Date:	- D	
	884 - <u>S</u> OAKWOOD more than one for large and/or linear resources) <b>Zone</b>	' mE/	1/4 of Sec; B.M. # City: <u>Orange</u> Zip: <u>92869</u> mN
	1: (Describe resource and its major elements. Include desig	gn, materials, condition, alterations, size, setti	ng, and boudnaries. Continues on Pg.3.)
Materials: Model LJ-124			
	Attributes: (HP2)Single family pro- es and codes) Present:  Present:  Present:		of District District Other (Isolates, etc.) P5b. Description of Photo: 2005 (View, date, accession #)
			*P6. Date Constructed/ Age and Source:
			<u>1960</u> c Historic Prehistoric Both *P7. Owner and Address:
			* <b>P8: Recorded by:</b> (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner City of Orange
			300 E. Chapman Ave. Orange, CA 92866
* <b>P11. Report Cita</b> Orange Count	tion: (Cite survey report and other sources, or enter "r y Assessor Records (2005). Chatte		*P9. Date Recorded: June 2015
	ources Survey.		* <b>P10. Survey Type:</b> (Describe) Reconnaissance
*Attachments:	NONE     Location Ma       Archaeological Record     District Record	ord Linear Feature Record	-
DPR 523A (1/95)			*Required Information

DEPARTMENT OF P	The Resources Agency ARKS AND RECREATION JCTURE, AND OBJECT RECORD	Primary # HRI # *NRHP Status Code	3D
Page 2 of 3 B1. Historic Name:	*Resource Name or #: (Assigned by Recorder)	OAKWOOD_S_884API	N_094-123-11
B1. Historic Name: B2. Common Name:	Unknown		
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style	Mid-Century Modern		
* <b>B6. Construction Hist</b> Front door replac	Construction date, atlerations, and date of alterations	s) Date of Construction:	1960 Historic Prehistoric Both
* <b>B7. Moved?</b> 🖌 No [	Yes Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Build	er: Eichler Homes - A. Quincy Jon	ies	
*B10. Significance:	Theme: Architecture Area:	City of Orange Pro	perty Type: _Residence
(Discuss importance in terms) Structural Integrity: Site Integrity:	e: Eichler Tract (c. 1959 - 1965) of historical or architectural context as defined by theme, pe <u>Good Condition - Low level of al</u>		•••
Opportunities			

B11. Additional Resource Attributes: (List attributes and codes)

#### \*B12. References:

Orange Daily News. Eichler Tract Brochures and miscellaneous Eichler materials from the Orange Public Library.

<b>B13. Remarks:</b> (Continues on Status change since	Pg.3.) 1991 Survey: Not previously surveyed.	(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	ents.)	*
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial	ORA	
Page 3 of 3	*	Resource Name or (Assigned by Recorde		OAKWOOD_S_884APN	_094-123-11
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plan	ner	Date Recorde	d: June 2015
City of Orange					
300 E. Chapman Ave				Continuati	on 🗌 Update
Orange, CA 92866					
Years Surveyed:	2005, 2	2015		Description of Photo	:
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.2069	# of Units:	1		
Principal Building Sqft:	2263				
B6. Construction History (	Continued fr	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 333 E. Culver Avenue APN: 390-403-11 Mills Act Contract Number: 392.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Matthew G. Burns and Ryoko Hase Burns, husband and wife as Community Property with Right of Survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>333 E. Culver Avenue</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>390-403-11</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Matthew G. Burns and Ryoko Hase Burns
Attn.: City Clerk	333 E. Culver Avenue
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

## [Remainder of page intentionally left blank; signatures on next page]

## IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Matthew G. Burns

Dated: \_\_\_\_\_, 2021

Ryoko Hase Burns

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

## EXHIBIT "A"

## **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Parcel 1: The west 40 feet of Lots 22 and 23, Block "A" of George Achison's Subdivision of Richland Forms Lots 41 and 42, in the City of Orange, County of Orange, State of California as per mpa recorded in Book 3 Page 49 of Miscellaneous Maps, in the office of the County Recorder of said County.

Parcel 2: A right of way for placing and the maintaining of sewer pipelines from a point on the east line of Parcel 1 above determined approximately 90 feet northerly from the center line of Culver Avenue and running thence easterly to a point to connect with the existing sewer line of Center Street.

[APN 390-403-11]

#### EXHIBIT "B"

## SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

## **REHABILITATION/MAINTENANCE SCOPE OF WORK**

#### 333 E. Culver Avenue

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Termite fumigation and repairs as recommended in the termite inspection report dated 4/29/2021.	\$2,795	2021
2.	Install new electrical breaker box and replace old electrical outlets with new code compliant outlet hardware.	\$5,784	2021
3.	Repair water damage to bathroom floor and subfloor.	\$1,000	2022
4.	Hire plumber to perform exploratory inspection of the plumbing system for leaks and root intrusion.	\$1,000	2022
5.	Seismic retrofit of house foundation, including creation of useable crawlspace access under the house and foundation repairs as needed.	\$15,000	2022
6.	Update HVAC system for the house in compliance with the <i>Historic Preservation Design Standards for</i> <i>Old Towne</i> . System options may include replacement of existing wall/window units, installation of mini-split system, or installation or whole-house central air system.	\$6,000	2023
7.	Repair and weather seal of existing historic wood windows.	\$3,000	2023
8.	Repair and repaint original built-in cabinet drawers in (guest bathroom, master bathroom, dining room).	\$1,000	2024
9.	Relocate gas meter along the east side of the house to comply with current safety and accessibility standards.	\$2,500	2025
10.	Repair concrete floor and foundation of the detached garage.	\$5,000	2026
11.	Replace stoop and steps at the rear (north) backyard entrance to the house to improve safety and accessibility.	\$2,000	2027
12.	Replace water heater.	\$3,000	2030
13.	Replace five (5) jalousie windows on the north and west elevations of the house with new wood frame windows to match existing original windows and comply with building code safety standards.	\$11,000	2030
14.	Paint the exterior of the house and detached garage.	\$12,000	2031
TOTAL		\$71,079	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of Califo	ornia - The Resources Agency		Primary #	30-158973
DEPARTMENT OF PARKS AND RE	OF PARKS AND RECREATION		HRI #	038339
PRIMARY F	RECORD			ORA
			NRHP Status Code	1D
	Other Listings: Review Code:		Reviewer:	Date:
Page 1 of 3		ame or #:	CULVER_E_333APN_	390-403-11
P1. Other Ident		.,		
*P2. Location:	Not for Publication	<ul> <li>Unrestricted</li> </ul>		
*a. County:	Orange	and (P2b and P2c	or P2d. Attach a location map as n	ecessary.)
*b. USGS 7.5	' Quad:	Date:	; R;	_ 1/4 of 1/4 of Sec;
c. Address:	333 - E CULVER		AVE ,	# City: Orange Zip: 92860
d. UTM: (Give	e more than one for large and/or linear resources)	) Zone	' mE/	mN
e. Other Loc	ational Data:			
	n: (Describe resource and its major elements. Ir	nclude design, materia	Ils, condition, alterations, size, settin	ng, and boudnaries. Continues on Pg.3.)
Materials:	rame - Wood siding			
				ised of side-facing gables and a .de piers. Entry is beneath at
center.	g gable on the central point	.on or the ra	cade supported by wi	de piers. Entry is beneath at
	Attributes: (HP2)Single fami	ly property		
,	es and codes)			
*P4. Resources	Present:  V Building Strue	cture 🗌 Objec		of District District Other (Isolates, e
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CLARK .		N 5 9 19		P5b. Description of Photo: 2005 (View, date, accession #)
Re-Po		N CAR SHE	A AND MALE CONTRACT	(100, 000, 0000000 ")
The	A STATE AND	* * * * *		*P6. Date Constructed/ Age and Source:
				1919
That a	A CARLON STATE	and the server		1919
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And the second			And A Street of	*P7. Owner and Address:
		A A A A A A A A A A A A A A A A A A A	ale hat	
				*P8: Recorded by: (Name, affiliation, and addre
			R R R	D. Gest, P. LaValley, D.
Tel .	the state of the			Matsumoto
				Chattel Architecture
	3			13417 Ventura Blvd.
				Sherman Oaks, CA 91423
				Sherman band, on Sirzo
		E.		*P9. Date Recorded:
*P11. Report Cit	ation: (Cite survey report and other sources	s, or enter "none.")		March, 2005
	y Assessor Records (2005).			
	sources Survey. AEGIS (1991) Ltage Orange County, Inc. (1			*P10. Survey Type: (Describe)
	, . ,	. ,		Reconnaissance
*Attachments:		cation Map	✓ Continuation Sheet(s)	Building, Structure, and Object Record
Autoriniellis.		trict Record	Linear Feature Record	
		otograph Record		
DPR 523A (1/95)		Sograph Neoolu		*Required Information
5. K 020K (1/30)				Nequirea informa

State of California - Th		Primary #	30-158973	
DEPARTMENT OF PARKS AND RECREATION		HRI #	038339	
BUILDING, STRUC	TURE, AND OBJECT RECORD	*NRHP Status Code	1D	
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	CULVER_E_333APN	_390-403-11	
	lknown			
B2. Common Name:				
B3. Original Use:		RES		
*B5. Architectural Style:	Craftsman Bungalow			
*B6. Construction History	Construction date, atlerations, and date of alterations)	Date of Construction:	1919 Historic Drehistoric Both	
* <b>B7. Moved? 🗹</b> No 🗌	Yes 🗌 Unknown Date:	Original Location:		
*B8. Related Features:				
*B9. Architect or Builder:	Unknown			
*B10. Significance: T	heme: Architecture Area: C	ty of Orange Pro	perty Type: Residence	
-	Old Towne: Interwar Development		Applicable Criteria: AC	
	istorical or architectural context as defined by theme, per			
	air Condition - Minor and revers	sible or appropriate	changes to original structure.	
Site Integrity:				
Opportunities:				
B11. Additional Resource	Attributes: (List attributes and codes)			
*B12. References:				
Orange Daily News.				
B13. Remarks: (Continues			(Sketch Map with North arrow required.)	
Status change since	e 1991 Survey: None.			
*B14. Evaluator:	Robert Chattel			
	September, 2005			
"Date of Evaluation	September, 2003			

(This space reserved for official comments.)

DPR 523B (1/95)

\*Required Information

State of California - The DEPARTMENT OF PAR CONTINUATION SI	KS AND REC	• •		Primary # HRI # Trinomial		-158973 3339 A	
Page 3 of 3 *Resource Name or #: (Assigned by Recorder)				CULVER_E_333API	N_390	0-403-11	
Recorded by:							
D. Gest, P. LaValley, D. Matsumoto				Date Recor	ded:	March, 2005	
Chattel Architectu				_			
13417 Ventura Blvd.				Continu	ation	Update	
Sherman Oaks, CA	91423						
Years Surveyed:	1982, 1991, 2005			Description of Photo: 1991			
Listed in National Register: 1997							
General Plan:	LDR	# of Buildings:	1	·····································	1.08		
Planning Zone:	R-2-6	# of Stories:	1	Par In Martin Par	£.,		
Lot Acre:	0.0906	# of Units:	1				-
Principal Building Sqft:	1200						1
B6. Construction History	(Continued f	rom Pg.2):			-		

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 1779 N. Winlock Street APN: 374-212-06 Mills Act Contract Number: 393.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Andrea Mychelle Baratie-Papalini and Pablo Papalini, wife and husband as joint tenants ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>1779 N. Winlock Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>374-212-06</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Andrea Mychelle Baratie-Papalini and
Attn.: City Clerk	Pablo Papalini
	1779 N. Winlock Street
300 E. Chapman Avenue	Orange, CA 92865
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

# IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Andrea Mychelle Baratie-Papalini

Dated: \_\_\_\_\_, 2021

Pablo Papalini

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 102 of Tract No. 3978, in the City of Orange, County of Orange, State of California. As shown by map on file in Book 140, Pages 17 through 19, inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 374-212-06]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

#### 1779 N. Winlock Street

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Install clear tempering UV protection film on all original single-pane floor to ceiling glass windows and glass sliders.	\$8,000	2022
2.	Inspection and maintenance of the existing foam roof system.	\$5,000	2023
3.	Repair deteriorating siding and address termite damage and recommended wood repairs noted in the termite inspection report dated 2/27/2021. Areas of greatest damage on the south wall of the atrium and south elevation. Any siding replacement shall be made in- kind with new Eichler vertical groove redwood siding. Paint the exterior of the house after repairs completed.	\$17,000	2024
4.	Repaint of entire house exterior taking into consideration recommendations noted in Eichler Design Standards for body and accent schemes.	\$10,000	2025
5.	Demolish existing cracked concrete driveway and replace in-kind with a new concrete driveway in the same footprint and configuration as the original driveway. Pea gravel shall be used in lieu of redwood dividers between concrete slabs.	\$6,000	2026
6.	Yearly maintenance of original sliding door systems, glass and garage doors.	\$5,000	2027
7.	Inspection and maintenance of the existing foam roof system.	\$5,000	2028
8.	Upgrade HVAC system for entire house in compliance with the Orange Eichler Design Standards. System options may include replacement of existing wall- mounted units or installation of a new mini-split system.	\$10,000	2029
9.	Replace front door knob and lock with historically accurate Eichler round escutcheon plate lockset.	\$500	2030
10.	Cleaning and maintenance of fireplace and chimney flute.	\$1,000	2030
11.	Yearly maintenance of water softener, reverse osmosis, and radiant heat flooring systems.	\$10,000	2031
TOTAL		\$77,500	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency		Primary #	
	OF PARKS AND RECREATION	HRI # Trinomial	ORA
PRIMARY F	ECORD		3D
	Other Listings:	Daviaura	Deter
	Review Code:	Reviewer:	Date:
Page 1 of 3	(Assigned by Recor		N_374-212-06
	fier: Fairmeadow Tract		
*P2. Location:		restricted	
*a. County: *b. USGS 7.5		P2b and P2c or P2d. Attach a location map as ne <b>T R</b> :	ecessary.) _ 1/4 of 1/4 of Sec;B.M.
	1779 - N WINLOCK		# <b>City:</b> <u>Orange</u> <b>Zip:</b> 92865
	more than one for large and/or linear resources) <b>Zone</b>		
e. Other Loc			
*P2a Decorintia			
Materials:	n: (Describe resource and its major elements. Include de	esign, materials, condition, alterations, size, settin	ig, and boudnaries. Continues on Pg.3.)
Model LA-24			
	Attributes: (HP2) Single family pr	roperty	
*P4. Resources	Present:  Building  Structure	Object Site Element of	of District District Other (Isolates, etc.)
			P5b. Description of Photo: 2005 (View, date, accession #)
			*P6. Date Constructed/ Age and Source:
ant .			1964 c
			Historic Prehistoric Both
			*P7. Owner and Address:
111 - 200			
W			
			* <b>P8: Recorded by:</b> (Name, affiliation, and address) R. Chattel
- 1 <sup>-</sup> 198			
			Chattel Architecture
			13417 Ventura Blvd.
			Sherman Oaks, CA 91423
			*P9. Date Recorded:
*P11. Report Cita	(;;;;;;;;		January 2005
	y Assessor Records (2005). Chattources Survey.	tel Architecture (2005)	*P10. Survey Type: (Describe)
			Reconnaissance
****			Puilding Structure and Object Description
*Attachments:	NONE     Location I     Archaeological Record District Re		
		bh Record 🗌 Other (List):	
DPR 523A (1/95)			*Required Information

State of California - The		Primary #	
DEPARTMENT OF PARK		HRI #	
BUILDING, STRUCT	URE, AND OBJECT RECORD	"NRHP Status Code	3D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	WINLOCK_N_1779_APN	_374-212-06
B1. Historic Name: Unk	nown		
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style:	Mid-Century Modern		
*B6. Construction History:	Construction date, atlerations, and date of alterations)	Date of Construction: 1	964 Historic Prehistoric Both
* <b>B7. Moved? 🖌</b> No 🗌 Ye	es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	Eichler Homes		
*B10. Significance: The	eme: <u>Architecture</u> Area: C	ity of Orange Prope	rty Type: Residence
Period of Significance:			Applicable Criteria:
(Discuss importance in terms of hist	orical or architectural context as defined by theme, peri	iod, and geographic scope. Also addre	ess integrity. Continues on Pg.4.)
Structural Integrity: Ex	cellent Condition - Low level o	of alteration as of 20	005.
Site Integrity:			
Opportunities			
B11 Additional Pasauroa /	Attributes: (List attributes and codes)		
*B12. References:	(List attributes and codes)		
Orange Daily News.			
D42 Demerter		(9kg	etch Map with North arrow required.)
B13. Remarks: (Continues on Status change since	<b>Pg.3</b> ) 1991 Survey: Not previously su		scir map with North arrow required.)
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:			
(This space reserved for official comm			
DPR 523B (1/95)			*Doquirod Information
011 0200 (1/80)			*Required Information

339

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial	ORA	
Page 3 of 3		*Resource Name or # (Assigned by Recorder)	-	NINLOCK_N_1779A	PN_374-212-06
Recorded by:					
R. Chattel				Date Record	led: January 2005
Chattel Architectu	re				
13417 Ventura Blvd	•			Continua	tion Update
Sherman Oaks, CA	91423				
Years Surveyed:	2005,	2015		Description of Phot	ю:
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1955	# of Units:	1		
Principal Building Sqft:	2176	_			
B6. Construction History (	Continued f	rom Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 895 S. Oakwood Street APN: 094-122-20 Mills Act Contract Number: 394.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Evan Ruppe and Alyson Ruppe, husband and wife as joint tenants ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>895 S. Oakwood Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>094-122-20</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Evan Ruppe and Alyson Ruppe
Attn.: City Clerk	895 S. Oakwood Street
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Evan Ruppe

Dated: \_\_\_\_\_, 2021

Alyson Ruppe

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 1 of Tract 3545, in the City of Orange, California, as per map recorded in Book 125, Page(s) 1 to 5, of Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 094-122-20]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

#### 895 S. Oakwood Street

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Upgrade main electrical panel to comply with current building code requirements.	\$3,000	2021
2.	Install new mini-split HVAC system in compliance with the Orange Eichler Design Standards.	\$16,000	2021
3.	Replace non-historic front door with new wood slab front door with historically accurate Eichler round escutcheon plate lockset.	\$2,000	2021
4.	Paint the walls of the atrium.	\$1,500	2021
5.	Replace non-historic bay window in the south wall of the atrium with a galvanized aluminum window to match the size and finish of original Eichler windows.	\$2,000	2022
6.	Treatment and repair of deteriorated wood on roof beams and eaves of the house, in atrium and exterior elevations.	\$4,000	2022
7.	Paint the exterior of the house.	\$10,000	2023
8.	Replace vinyl sliding window on rear (east) elevation with a galvanized aluminum window to match the size and finish of original Eichler windows.	\$2,000	2025
9.	Repair or replacement exterior siding as needed with new Eichler vertical groove redwood siding as needed on all elevations.	\$35,000	2030
10.	Maintenance of original sliding doors on all elevations. Replace broken or damaged glass at sliders.	\$4,500	2031
TOTAL		\$80,000	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

DEPARTMENT OF PARKS AND RECREATION       Intermining       Other Listings:         PRIMARY RECORD       Intermining       Other Listings:         Review Code:       Review cr       Date:         Page 1 of 3       Resource Name or #:       Option 100 (100 (100 (100 (100 (100 (100 (100		rnia - The Resources Agency		Primary # HRI #	
NNHP Status Code       3g         Review Code:       Review Code:       Date:         Page 1 of 3       Resource Name or #: Magnetity Rocomd       OAKX000_5_939_AFB_094-122-20         P1: Other Identifier:       Faithaven Tract       OAKX000_5_939_AFB_094-122-20         P2. Location:       Not for Publication       Ø Unrestricted         **a. County:       Orange       mail (pp and poor 924. Astata based maps a mesnaps)         *b. USGS 7.5* Quad:       So Cartry Counce       Zp:       D2669         0. UTK:       Control of the analytic flags reduction theoremetarces a control of the control of the analytic flags reduction the orange and theoremetarces and the regreatements of the analytic flags reduction, alteration, alteration				1	ORA
Review Code:       Reviewer:       Date:         Page 1 of 3       'Resource Name or #: (Ausgrafty Research)       OAKNOOL 9: 895_APM_094-122-20         P1. Other Identifies:       'aithaven Tract         *2. Coatrio:       OTange       and (PD) not Pace ref. Austin a bottom may on nonzerow)         *b. USGS 7.5' Qued:       O Catinge       and (PD) not Pace ref. Austin a bottom may on nonzerow)         *b. USGS 7.5' Qued:       S CARNOOD       S T (P )       City: Crance Zip: 92869         d. UTH: (Como the new for large and use in the resource) Zone       'mE/       mN       .         e. Other Locational Data:       's Canthy: Crance Zip: 92869       .       .         *P3b. Resource Attributes:       (msc) = family property       .       .       .         *P4. Resource Attributes:       (msc) = family property       .       .       .       .         *P3b. Resource Attributes:       (msc) = Since Training       .	PRIMARI	CORD	NF	HP Status Code	3D
Page 1 of 3       "Resource Name of #: Designed by Recenter;       ONXXOD: S: 8.99 _ APRI (094-172-20)         P1. Other Identifie:		-	-		Detai
Meanging by Recordery         P1. Other Infertifie::       Pair/harven Tract         P2. Location:       Oxto for Publication       Interstricted         *a. County:       Orange       and (Pb and Pbc or Pid. Atthch a location map as measures)         *b. USGS 7:5 'Quade;       Date:       T : R : 1/4 of 1/4 of See : 28.M.         c. Address:       835 _ S OxENOOD       Str. + Clip:       Orange         c. Other Locational Data:       T : R : 1/4 of 1/4 of See : 29.2869       Million map and the intermemory 2010         *B3. Description:       (locational Data:       TT : R : 1/4 of 1/4 of See : 29.2869         *P3b. Resource Attributes:       (ust not map and the intermemory 2010       Materials:         wodel La-4bx       *P3b. Resource Attributes:       (ust not map and the intermemory 2010)         *P4b. Resource Attributes:       (ust not map and the intermemory 2010)       Site : Element of District : District : Other (Isolates, etc.)         *P5b. Description of Photo:       2014         *P6. Date Constructed Age and Source:       1960 - 0         *P6. Date Constructed Age and Source:       1960 - 0         *P6. Date Constructed Age and Source:       1960 - 0         *P7. Owner and Address:       Mariasa Resource Areodia (2005), Chartel Architecture (2005)         *P8. Recorded by:       (ustans, attributes, and address)		Review Code:	P		Date:
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Orange County Assessor Records (2005). Chattel Architecture (2005)         Historic Resources Survey.         *P10. Survey Type: (Describe)         Reconnaissance         *Attachments:       NONE         Archaeological Record       District Record         Linear Feature Record       Milling Station Record         Artifact Record       Photograph Record         Other (List):	*044 0			And	*P9. Date Recorded:
Historic Resources Survey.       *P10. Survey Type: (Describe) Reconnaissance         *Attachments:       NONE       Location Map       ✓ Continuation Sheet(s)       ✓ Building, Structure, and Object Record         △ Archaeological Record       District Record       △ Linear Feature Record       Milling Station Record       Rock Art Record         △ Artifact Record       ○ Photograph Record       Other (List):	•	(ene carro) report and carer cou		sture (2005)	June 2015
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	DPR 523A (1/95)	Artifact Record	Photograph Record	Other (List):	*Required Information

State of California - T DEPARTMENT OF PARTMENT OF PARTMENT OF PARTMENT OF PARTMENT OF PARTMENT	ARKS AND R	• •	Primary # HRI # D *NRHP Status Code	3D
Page 2 of 3		*Resource Name or #: (Assigned by Recorder)	OAKWOOD_S_895API	N_094-122-20
B1. Historic Name:	Unknown			
B2. Common Name:				
B3. Original Use:	RES	B4. Present Use:	RES	
*B5. Architectural Style	Mid-Cer	ntury Modern		
*B6. Construction Histo	ory: (Constructio	n date, atlerations, and date of alterat	ions) Date of Construction:	1960 Historic Prehistoric Both
*B7. Moved? ✔ No *B8. Related Features: *B9. Architect or Builde		nknown Date:	Original Location:	
*B10. Significance:	Theme: A	architecture Area:	City of Orange Pro	perty Type: Residence
•		Tract (c. 1959 - 196 hitectural context as defined by theme	5) , period, and geographic scope. Also a	Applicable Criteria: C ddress integrity. Continues on Pg.4.)
Structural Integrity:	Excellent	Condition - Low leve	el of alteration as of	2005.
Site Integrity:				
Opportunities				
B11. Additional Resour	ce Attributes	: (List attributes and codes)		
*B12. References:				
Orange Daily News Library.	. Eichler	Tract Brochures and m	niscellaneous Eichler m	naterials from the Orange Public

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	nents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3	3 *Resource Name or #: (Assigned by Recorder)			OAKWOOD_S_895APN_094-122-20	
Recorded by:					
Marissa Moshier, Historic Preservation Planner			ner	Date Recorde	ed: June 2015
City of Orange					
300 E. Chapman Ave.				Continuat	ion 🗌 Update
Orange, CA 92866					
Years Surveyed:	2005, 2015			Description of Photo	<b>p:</b> 2005
Listed in National Registe	er:				
General Plan:	LDR	# of Buildings:	1	_	
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1907	# of Units:	1		
Principal Building Sqft:	2242			C Ster and a	
B6. Construction History	(Continued fr	om Pg.2):			

3151

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 151 N. Shaffer Street APN: 386-071-05 Mills Act Contract Number: 395.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Ryan Malloy and Michelle Malloy, Trustees of the Ryan and Michelle Malloy Living Trust dated July 21, 2015 ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>151 N. Shaffer Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>386-071-05</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Ryan Malloy and Michelle Malloy
Attn.: City Clerk	159 N. Shaffer Street
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Ryan Malloy, Trustee

Dated: \_\_\_\_\_, 2021

Michelle Malloy, Trustee

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:

Lot 50 of Henry Grote's Addition to Orange, in the City of Orange, County of Orange, State of California, as per map in Book 25 Page 17 of Miscellaneous Records, in the office of the County Recorder of Said County.

[APN 386-071-05]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

### 151 N. Shaffer Street

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Foundation repair, including installation of building code-compliant foundation piers and repair of subfloor sheathing.	\$8,500	2021
2.	Replace existing knob and tube electrical wiring with new building code compliant wiring throughout the house.	\$15,000	2021
3.	Termite treatment and repair as recommended in the termite inspection report dated 7/1/2021.	\$7,970	2021
4.	Repair plumbing leaks in the bathroom, including repair of drywall and mold abatement.	\$5,000	2021
5.	Paint exterior of the house.	\$9,000	2021
6.	Hire an architect to design and construct a historically appropriate front porch for the residence, to replace an existing non-historic tile patio, in compliance with the <i>Historic Preservation Design Standards for Old Towne</i> .	\$30,000	2022
7.	Replace roof with a new composition shingle roof system.	\$10,000	2025
TOTAL		\$85,470	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California -	The Resources Agency		Primary #	30-159588	
DEPARTMENT OF P	ARKS AND RECREATION		HRI #	038954	
PRIMARY RECO	RD		Trinomial	ORA	
			NRHP Status Code	1D	
	Other Listings:				
	Review Code:		Reviewer:		Date:
DEPRIMENT OF PARKS AND RECREPTION       Thromail       068         PRIMARY RECORD       Thromail       068         NRHP Status Code       10         Other Listings:       Reviewer:       Date:         Page 1 of 3       Resource Name or #:       SITAPEE_N_151_APN_386-0/1-05         P1. Other Identifier:       ***       Outro respective Memory       Unrestricted         ***       Contry       Orange       and (rb and rece P2A Atuch a location map as necessary)         ***       USSS 7.5 Quad:       Date:       T ; R ; 1/4 of       1/4 of Sec ; B.M.         **       Contry       Orange       and (rb and rece P2A Atuch a location map as necessary)       T/*       1/8 of Sec ; B.M.         **       Contry       Orange       Zip: 928.06       Other Costional Date:       T**         ***       Desc:       T ; R ; 1/4 of 1/4 of Sec ; B.M.       Site of the necessary base of the inpart encoursed Zone       mef / mN       mN       e. Other Listing:       Site of the necessary base of the inpart encoursed inpart encoursed Zone       mef / mN       mN       e. Other Listing:       Site of the necessary base of the inpart encoursed inpa					
P1. Other Identifier:					
		Unrestricted			
*b. USGS 7.5' Quad	:	Date:	; R;	-1/4  of  -1/4  of	of Sec;B.M.
c. Address: 15	1 - N SHAFFER		ST	, # City:	Orange Zip: 92866
d. UTM: (Give more the	an one for large and/or linear resourc	ces) Zone	' mE/	mN	
e. Other Locationa	I Data:				
*P3a, Description: (Doc	criba resource and its major elements	locludo dosigo motori	als condition altorations size so	atting and houdparios. Conti	nuos on Pa 3 )
		s. moluue ueorgn, materi		ang, and boudhanes. Com	1000 011 g.o.,
A single-story ho	use with shiplap sid	ing and single	. front-facing gab	le roof. No por	ch is present, but
the high, narrow	windows' inner-frami	ng define the	house as being fro		
1982 survey, this	s structure has been	appropriately	altered.		
		mily property			
	·	ructure 🗌 Obje	ct 🗌 Site 🔽 Elemen	t of District 🗌 Distr	ict Other (Isolates, etc.)
		ant Mg		P5b. Description	of Photo: 2005
Sec. Where			ALL STOL	•	
		CONVERT			
Sec. 3				*P6. Date Constru	ucted/ Age and Source:
1-1-1					1887
	1 See	- Jacobie			
15-15 V		-		✓ Historic	Prehistoric Both
	My and the				
	magnes.	the first		*P7. Owner and A	Address:
	*	Non Maria			
		the second second	144 138 10	*D0: Deservised by	
		DALL AND ALL AND AL			
	CARSTON R	TA LA LA			Lavalley, D.
				Chattel Arch	nitecture
H	a for a start of the start of the			13417 Ventur	ra Blvd.
			The second second	Sherman Oaks	s, CA 91423
		and the second	A CONTRACTOR OF THE OWNER OWNER OWNER OF THE OWNER OWNE		
*D11 Depart Citation	(0)				ed:
•			itecture (2005)	April, 2005	
5 1				*P10. Survey Tyn	e: (Describe)
					, ,
*Attachments:	IONE L	ocation Map	Continuation Sheet	s) 🗹 Building, Strue	cture, and Object Record
		District Record			Record Rock Art Record
_	• <u> </u>	hotograph Record			
DPR 523A (1/95)	· · ·	0 1			*Required Information

State of California - The DEPARTMENT OF PARK BUILDING, STRUCT	• •	Primary # HRI # *NRHP Status Code	30-159588 038954 1D
Page 2 of 3 B1. Historic Name: Her	* <b>Resource Name or #:</b> (Assigned by Recorder) ary and Wilhelmine Grote House	SHAFFER_N_151AP	N_386-071-05
B2. Common Name:		(1007)	
B3. Original Use:	RES <b>B4. Present Use:</b>	RES	
*B5. Architectural Style:	Gothic Revival		
*B6. Construction History:	(Construction date, atlerations, and date of alterations)		1887 Historic Prehistoric Both
* <b>B7. Moved?</b> 🔽 No 🗌 Y	es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	Unknown		
*B10. Significance: The	eme: Architecture Area: C	ity of Orange Pro	perty Type: Residence
Period of Significance:	Old Towne: Early Settlement (c.	1870 - 1920)	Applicable Criteria: AC
	orical or architectural context as defined by theme, peri		
Structural Integrity: Ex Site Integrity:	cellent condition - Minor and r	eversible of approp	priate changes to original structure.
Opportunities:			
Grote Store in town. 169 N. Shaffer (See		ouse while they were	was the co-proprietor of the Ehlen & e waiting for their larger home at few doors away.
* <b>B12. References:</b> Orange Daily News.			
<b>B13. Remarks:</b> (Continues on Status change since Style previously not			(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:			
(This space reserved for official comm	nents.)		
DPR 523B (1/95)			*Required Information

State of California - The DEPARTMENT OF PAR CONTINUATION SI	KS AND REC	• •		Primary # HRI # Trinomial	30-159588 038954 ORA
Page 3 of 3	•	Resource Name or # (Assigned by Recorder		AFFER_N_151API	J_386-071-05
Recorded by:					
D. Gest, P. LaVall	ey, D. Mat	sumoto		Date Record	ed: April, 2005
Chattel Architectu	ire				
13417 Ventura Blvd	l.			Continuat	ion 🗌 Update
Sherman Oaks, CA	91423				
Years Surveyed:	1982,	1991, 2005		Description of Phot	<b>o:</b> 1991
Listed in National Registe	er: 1997				
General Plan:	LDR	# of Buildings:	1	76	
Planning Zone:	R-2-6	# of Stories:	1	The phillipping	
Lot Acre:	0.1649	# of Units:	1		
Principal Building Sqft:	1223	_			
B6. Construction History	(Continued f	rom Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

### EXHIBIT "F"

# **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 339 N. Cambridge Street APN: 386-121-07 Mills Act Contract Number: 396.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Vinh Thuy Lam and Pamela Boi Yang, husband and wife as Community Property with Right of Survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>339 N. Cambridge Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>386-121-07</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Vinh Thuy Lam and Pamela Boi Yang
Attn.: City Clerk	11815 Borum Avenue
300 E. Chapman Avenue	Tustin, CA 92782
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Vinh Thuy Lam

Dated: \_\_\_\_\_, 2021

Pamela Boi Yang

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:** 

THE WEST 165 FEET OF THE SOUTH 2 1/2 ACRES OF THE FOLLOWING:

BEGINNING 3.53 CHAINS SOUTH OF THE NORTHWEST CORNER OF THE SOUTH HALF OF LOT 10 IN BLOCK E OF THE A.B. CHAPMAN TRACT AS SURVEYED BY E.R. NICHOLS IN 1871, RUNNING THENCE EAST TO THE CENTERLINE OF A MAIN IRRIGATION DITCH OF THE SANTA ANA VALLEY IRRIGATION COMPANY; THENCE SOUTHEASTERLY ALONG THE CENTERLINE OF SAID DITCH TO A POINT; 3.23 CHAINS NORTH OF THE SOUTH LINE OF SAID LOT 10; THENCE WEST TO THE WEST LINE THEREOF AND HENCE NORTH ALONG SAID WEST LINE, 3.23 CHAINS TO THE POINT OF BEGIN NING.

EXCEPT ANY PORTION THEREOF WHICH MAY LIE WITHIN THE NORTH HALF OF THAT PORTION OF LOT 10 IN BLOCK 5, WHICH IS DESCRIBED ABOVE BY METES AND BOUNDS, THE EXACT ACREAGE OF SAID PORTION NOT BEING SHOWN BY THE RECORDS;

ALSO EXCEPT THAT PORTION CONVEYED TO CLAUDE A. RYAN AND WIFE, BY DEED RECORDED JANUARY 18, 1951 IN BOOK 2130, PAGE 316 OF OFFICIAL RECORDS.

APN: 386-121-07

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Termite treatment and repairs as recommended in the termite inspection report dated 7/16/2021.	\$8,000	2024
2.	Repair of wood rafter tails on the rear (east) elevation of the building.	\$1,000	2022
3.	Paint exterior of the house.	\$10,000	2023
4.	Seismic retrofit of the foundation.	\$6,000	2026
5.	Roof replacement on house and garage.	\$20,000	2030
TOTAL		\$45,000	

# 339 N. Cambridge Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

	The Resources Agency ARKS AND RECREATION RD Other Listings:		Prima HRI # Trinon NRHP Status Co	nial	30-1593 038666 ORA 1D				
	Review Code:		Reviewer:				Date:		
Page 1 of 3	*Resource (Assigne	Name or #: d by Recorder)	CAMBRIDGE_N_3	339 <u></u> A	.PN_386-	121-07			
P1. Other Identifier:									
*P2. Location:	Not for Publication	Unrestricted							
*a. County: *b. USGS 7.5' Quad:	Orange	Date:	2c or P2d. Attach a location <b>T</b> ; <b>R</b>		necessary.) 1/4 of	1/4 of	Sec		B.M
			, ĸ	, st ,		City: 0	-	( )	
	n one for large and/or linear resource		•	mE/	#	_ City: mN	lange	ZID:	92800
e. Other Locational	-					-			
	Dulu.								
*P3a. Description: (Description:	ribe resource and its major elements	. Include design, mate	erials, condition, alterations,	size, setti	ng, and boud	naries. Contin	ues on Pg.3	.)	
Materials: Frame -	Wood siding								
present on the fr which is supported	use with box plan, cl ont portion of the ro d by classical column there is a large pict	oof. One-hal	lf of the front ginal wood door	facade	e is def ill pres	ined by	a reces	ssed p	orch
					P5b. D (Vii *P6. Da ✓ I *P7. Ow *P8: Re D. G Mats Chat	Distric escription aw, date, acces te Construc Historic [ mer and Access corded by: est, P. 1 umoto tel Arch: 7 Ventura	of Photo sion #) cted/ Age 1905 ] Prehist ddress: (Name, a LaValle	e and S c toric	2005 Source:
*P14 Demont Citation:		-			*P9. Da	man Oaks, <b>te Recorde</b>		1423	
*P11. Report Citation: Orange County Ass	(Cite survey report and other sourcessor Records (2005).		chitecture (2005	)	Apri	1, 2005			
Historic Resource	s Survey. AEGIS (1991 Orange County, Inc.	l) Historic H	Building Invento	ry		urvey Type		e)	
Ar	chaeological Record	ocation Map istrict Record hotograph Recor	Continuation S Linear Feature rd Other (List):	. ,		ding, Struct	Record	Rock	

DPR 523A (1/95)

\*Required Information

State of California - The DEPARTMENT OF PARK BUILDING, STRUCT		Primary # HRI # *NRHP Status Code	30-159300 038666 1D
Page 2 of 3 B1. Historic Name: S.	*Resource Name or #: (Assigned by Recorder) E. and Sophie Evans House	CAMBRIDGE_N_339_	_APN_386-121-07
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style:	Hip Roof Cottage		
*B6. Construction History:	(Construction date, atlerations, and date of alterations)	Date of Construction:	1905 c
* <b>B7. Moved?</b> 🖌 No 🗌 Y	es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	Unknown		
*B10. Significance: The	eme: Architecture Area: C	City of Orange <b>Pr</b>	operty Type: Residence
Period of Significance:	Old Towne: Early Settlement (c.	1870 - 1920)	Applicable Criteria: AC
	orical or architectural context as defined by theme, per		
	cellent Condition - No apparent	c change to origina	l structure.
Site Integrity:			
Opportunities:			
Store in town.	were S. E. and Sophie Evans. 1 Attributes: (List attributes and codes)	Mr. Evans was propr	ietor of the Evans and Stinson Feed
*B12. References:			
Orange Daily News.			
<b>B13. Remarks:</b> (Continues on Status change since			(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:	September, 2005		
(This space reserved for official comm	nents.)		-
DPR 523B (1/95)			*Required Information

State of California - Th DEPARTMENT OF PAR CONTINUATION S	RKS AND REC	• •		Primary # HRI # Trinomial	30-159300 038666 ORA
Page 3 of 3		*Resource Name or a (Assigned by Recorde		CAMBRIDGE_N_339	_APN_386-121-07
Recorded by:					
D. Gest, P. LaVal	ley, D. Mat	sumoto		Date Record	ded: April, 2005
Chattel Architect					
13417 Ventura Blv				Continua	ation Update
Sherman Oaks, CA	91423				
Years Surveyed:	1982,	1991, 2005		Description of Pho	oto: 1991
Listed in National Regist	er: 1997				
General Plan:	LDR	# of Buildings:	1	_	~
Planning Zone:	R-1-6	# of Stories:	1		
Lot Acre:	0.2558	# of Units:	1	5	
Principal Building Sqft:	990	_			
B6. Construction History	(Continued f	rom Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 544 E. Palmyra Avenue APN: 390-421-06 Mills Act Contract Number: 397.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Rick Busch and Amy Busch, husband and wife as community property with right of survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at 544 E. Palmyra Avenue\_in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>390-421-06</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Rick Busch and Amy Busch
Attn.: City Clerk	544 E. Palmyra Avenue
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Rick Busch

Dated: \_\_\_\_\_, 2021

Amy Busch

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 6 of Block A of A. L. C. Bibber's resubdivision of Richland Farm Lot No. 37, in the City of Orange, County of Orange, State of California, as shown on a map recorded in Book 4, Page 41 of Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 390-421-06]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Termite remediation and repairs	\$4,500	2021
	recommended in the termite inspection report dated 7/22/2021.		
2.	Repairs to house foundation, including replacement and reinforcement of foundation piers and tying the original house foundation to the rear addition.	\$15,000	2021
3.	Upgrade electrical system throughout the house to replace knob and tube wiring and meet current building code requirements.	\$20,000	2021
4.	Upgrade plumbing system throughout the house to meet current building code requirements.	\$8,000	2021
5.	Installation of new central HVAC system.	\$21,000	2021
б.	Paint exterior of the house.	\$10,000	2022
7.	Repair and reline chimney of the house.	\$4,000	2022
TOTAL		\$82,500	

# 544 E. Palmyra Avenue

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency		ıcv	Primary # 3		30-1591	0-159161					
DEPARTMENT		•	•			HRI #	038527				
PRIMARY R	ECORD					Trinomial	ORA				
					NRHP	Status Code	1D				
		Other List	-								
		Review C	ode:		Revie	wer:			Date:		
Page 1 of 3			ource Name (Assigned by Re		PALMYF	RA_E_544AP	N_390-421	1-06			
P1. Other Identif	ier:										
*P2. Location:	Not	for Publication	<b>v</b> (	Unrestricted	ł						
*a. County:	(	Orange	and	(P2b and P2	2c or P2d. Atta	ch a location map as	s necessary.)				
*b. USGS 7.5'	Quad:		Dat	e:	_ T	; R;	1/4 of	1/4	of Sec	;	В.М.
c. Address:	544 -	E PALM	IYRA			AVE	,#	City:	Orange	Zip:	92866
d. UTM: (Give r	more than one fo	or large and/or linear	r resources) <b>Zo</b>	ne		mE/		mN		_	
e. Other Loca	tional Data	:									
*P3a. Description	Clescribe res	ource and its major e	elements. Includ	e design, mate	rials, condition,	, alterations, size, se	tting, and boud	naries. Co	ntinues on Pg	.3.)	
Materials: Fra	ame - Woo	d siding									
A single-stor											
single-gable originally a											
overhang which								1		,	
*P3b. Resource A (List attributes	Attributes:	(HP2)Singl	e family	property							
*P4. Resources P	,	<ul> <li>Building</li> </ul>	Structur	e 🗌 Obje	ect 🗌 Sit	e 🖌 Elemen	t of District	🗌 Dis	strict 🗌 C	Other (Is	solates, etc.)
	AT AT ANY										
A CAR	SP -					/	P5b. D	escripti	on of Phot	to:	2005
A Tak	A State	2				/	(Vie	ew, date, a	ccession #)		
	NAGE ??						*P6. Dat	te Cons	tructed/ A	ae and	Source:
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	CAL STREET	STR. Con		A AUSTA MA		AL STRO			1919		-
		O.C.					🖌 🗸 H	Historic	🗌 Prehi	istoric	Both
				1	- California						
the second			544				*P7. Ow	ner and	Address:		
See Street											
A. C.					And Inc.						
							*P8: Re	corded	bv: (Name	affiliation	n, and address)
7				Asta make	Low - Make	No.			. LaVall		
		and the second					Mats	umoto			
timet	A Contraction of the	and the state of the		- Children	the maintained	and the second	Chat	tel Ar	chitectu	re	
A POST	ARE CONTRACTOR	(2)的神秘度	-	- COL	Constant Street Provent	the Manutan	1341	7 Vent	ura Blvd		
Contraction of the	and the second	A CONTRACTOR	and and a second		-	CREW Street	Sher	man Oa	ks, CA	91423	
and and the	and the second	1 and	- 544	and the second	1910 - 19 <u>-</u> 29	and the second s					
*D11 Depart Cite	41em	Sector Sector			A COLOR OF A COLOR		*P9. Dat				
*P11. Report Cita Orange County	<b>(</b> - · · ·	survey report and oth		,	hitectur	e (2005)	Apri	1, 200	5		
Historic Reso	ources Su	rvey. AEGIS	(1991) H	istoric E	Building	Inventory	*P10. St	urvey Ty	/pe: (Descr	ibe)	
Update. Herit	tage Orang	ge County, 1	Inc. (1982	2) Orange	e Histori	c Survey.		nnaiss		,	
			<b>—</b> ••••				\ <b>•</b>			1.011	
*Attachments:		alagiaal Description		•		inuation Sheet(	,	-	ucture, and		
	_	ological Record		Record		ar Feature Reco	na 🔄 Milli	ng Statio	Record		k Art Record
DPR 523A (1/95)	Artifact	Recolu		raph Recor		r (List):			*P	auiroc	Information

DPR 523A (1/95)

\*Required Information

State of California - The	Resources Agency	Primary #	30-159161
DEPARTMENT OF PARK	S AND RECREATION	HRI #	038527
BUILDING, STRUCT	TURE, AND OBJECT RECORD	*NRHP Status Code	1D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	palmyra_e_544af	N_390-421-06
B1. Historic Name: A.I	. and Grace Tomblin House		
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style:	Craftsman Bungalow		
*B6. Construction History: This porch has since	(Construction date, atlerations, and date of alterations)	Date of Construction:	1919 Wistoric Prehistoric Both
* <b>B7. Moved? 🖌</b> No 🗌 Y	es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	Unknown		
*B10. Significance: The	eme: Architecture Area: C	City of Orange Pro	pperty Type: Residence
Period of Significance:	Old Towne: Interwar Development	(c. 1921 - 1941)	Applicable Criteria: AC
-	torical or architectural context as defined by theme, per		address integrity. Continues on Pg.4.)
Structural Integrity: Ex	cellent Condition - No apparent	change to original	structure.
Site Integrity:			
Opportunities:			
	) have been originally owned by Pelephone and Telegraph in town		mblin. Mr. Tomblin was the wire
B11. Additional Resource a *B12. References: Orange Daily News.	Attributes: (List attributes and codes)		
B12 Demesker			(Sketch Map with North arrow required.)
<b>B13. Remarks:</b> (Continues on Status change since			
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:	September, 2005		
(This space reserved for official comn	nents.)		
DPR 523B (1/95)			*Required Information
( , )			

State of California - Th DEPARTMENT OF PAR CONTINUATION S	KS AND REC	• •		Primary # HRI # Trinomial		-159161 8527 A
Page 3 of 3	•	*Resource Name or (Assigned by Recorde		palmyra_e_544ap	N_39	0-421-06
Recorded by:						
D. Gest, P. LaVal	ley, D. Mat	sumoto		Date Record	led:	April, 2005
Chattel Architect						
13417 Ventura Blv				Continua	tion	Update
Sherman Oaks, CA	91423					
Years Surveyed:	1982,	1991, 2005		Description of Phot	to:	1991
Listed in National Regist	er: 1997					
General Plan:	LDR	# of Buildings:	1		NOTING.	
Planning Zone:	R-2-6	# of Stories:	1			
Lot Acre:	0.1652	# of Units:	1			· · · · · · · · · · · · · · · · · · ·
Principal Building Sqft:	1464					
B6. Construction History	(Continued f	rom Pg.2):		Ê	544	

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 3810 E. Fernwood Avenue APN: 094-462-03 Mills Act Contract Number: 398.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Adrian Turner and Thuy Turner, as Trustees of The Adrian Turner and Thuy Turner Trust of 2014 ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>3810 E. Fernwood Avenue</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>094-462-03</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	The Adrian Turner and Thuy Turner Trust of 2014
Attn.: City Clerk	3810 E. Fernwood Avenue
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Adrian Turner, Trustee

Dated: \_\_\_\_\_, 2021

Thuy Turner, Trustee

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 112 of Tract No. 3545, in the City of Orange, County of Orange, State of California, as shown on a map thereof recorded in Book 125, Pages 1 to 5 inclusive, of Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 094-462-03]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

## **REHABILITATION/MAINTENANCE SCOPE OF WORK**

## 3810 E. Fernwood Avenue

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
	Repair roof leaks and apply white silicone sealer over entire roof. Replace existing deteriorated skylights. Strip paint from skylight wells and stain to match original condition	\$18,500	2024
	<ul> <li>Bathroom restoration:</li> <li>Replace bathrooms w/ original cabinets</li> <li>Replace bathroom tub and tile w/ original matching tub and tile</li> </ul>	\$14,000	2025
	Strip paint from chimney and restore to original condition	\$2,000	2026
	Maintain and repaint exterior beams and trellis	\$2,500	2026
	Replace deteriorating siding and trim on east and west side of house and in atrium due to sun and weather damage	\$9,500	2027
	Paint siding and trim as necessary	\$4,000	2027
	Replace existing deteriorating air conditioning unit and furnace	\$3,500	2027
	Repaint exterior of house	\$7,500	2030
TOTAL		\$61,500	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

Other Listings: Review Code:       Review Code:       Date:         Page 1 of 3       "Review Code:       Date:         Page 1 of 3       "Review Code:       Date:       Date:       Date:       Date:       T       Review Code:       Costion:       Costion:       Costion:       Costion:       Costion:       Costion:       Date:       T       Review Code:       Costion:        Costion:       <		rnia - The Resources Agency OF PARKS AND RECREATION ECORD		DRA 3D
(designed by Recorded)         P1. Other Identifier:       P1 if haven T isn't         P2. Location:       Date:       T       R       1/4 of Sec       B.M.         ib. USGS 7:5 'Guada:       Date:       T       R       1/4 of Sec       B.M.         c. Address:       3810       E       FERMINOOD       Ave: , #       City: or ang Zip: 22859         d. UTM: (the more han one for targe andor lense mesources) Zone       mE       mN         e. Other Locational Data:       "       mE       mN         P3D. Resource Attributes:       (H22)Single family property		-	Reviewer:	Date:
*P2. Location:       Oxtinge       Outrestituted         *a. County:       Ortinge       and (%b and Pice r PA. Attach a location map as necessary.)         *b. USGS 7/5 Utad:       Date:       T_; R_; 1/14 of 1/4 of Sec_; B.M.         c. Address:       3810       E_PERNINOD       AVE . #         c. Other Locational Data:       "P3a. Description: (Describe resource and ta major elements. Include design, materials, condition, siterations, size, setting, and boucharles. Continues on Pg.3.)         Materials:	-	(Assigned b		N_094-462-03
e. Other Locational Data:          *P32. Description: (baschie resource and its major elements. Include design, materials, condition, alterations, site, setting, and boulhairles. Continues on Pg.3.)         Materials:         Model LA-81    *P3b. Resource Attributes: (IEP2)Single family property: *P4. Resources Present: Building Structure Object Site Element of District Other (Isolates, etc.) *P6. Description of Photo: 2005 (Vew. data, accession if) *P6. Date Constructed/ Age and Source: 1360 c	*P2. Location: *a. County: *b. USGS 7.5'	Not for Publication Orange Quad:	and         (P2b and P2c or P2d. Attach a location map as new           Date:	1/4 of;B.M.
*P3b. Resource Attributes:       (HP2)Single family property         (Lat attributes and codes)       Image: Code (Later Code (Late)	e. Other Loca *P3a. Descriptior	ational Data:		
*P4. Resources Present:          P Building          Structure          Object          Site          Element of District          Other (Isolates, etc.)             P5b. Description of Photo:         2005         (Vew, date, accession #)             P6. Date Constructed/ Age and Source:             1960 c             Historic         Prehistoric         Both             P7. Owner and Address:             P8: Recorded by: (Name, affiliation, and address)         Marissa Moshier, Historic         Preservation Planner         City of Orange         300 E. Chapman Ave.         Orange, CA 92866             P11. Report Citation:         (Cle survey report and other sources, or enter "none.")         Orange County Assessor Records (2005). Chattel Architecture (2005)         Historic Resources Survey.             P11. Report Citation:         (Cle survey report and other sources, or enter "none.")         Orange County Assessor Records (2005). Chattel Architecture (2005)         Historic Resources         Survey.             P11. Report Citation:         (Cle survey report and other sources, or enter "none.")         Orange County Assessor Records (2005). Chattel Architecture (2005)         Historic Resources         Survey.             P11. Report Citation:         (Cle survey report and other sources, or enter "none.")         Orange County Assessor Records (2005). Chattel Architecture (2005)         Historic Resource         Survey.             P1. Survey Type: (Describe)         Reconnaissance             P1. Surve	Model LA-81		ly property	
<pre></pre>			cture 🗌 Object 🔲 Site 🗌 Element of	P5b. Description of Photo: 2005
*P11. Report Citation:       (Cite survey report and other sources, or enter "none.")       City of Orange         Orange County Assessor Records (2005).       Chattel Architecture (2005)         Historic Resources Survey.       *P10. Survey Type: (Describe)         *Attachments:       NONE         Archaeological Record       District Record         District Record       Continuation Sheet(s)         *Attack Record       District Record         Other (List):				1960 c
*P11. Report Citation:       (Cite survey report and other sources, or enter "none.")       June 2015         Orange County Assessor Records (2005).       Chattel Architecture (2005)       *P10. Survey Type: (Describe)         Reconnaissance         *Attachments:       NONE       Location Map       ✓ Continuation Sheet(s)       ✓ Building, Structure, and Object Record         Archaeological Record       District Record       Linear Feature Record       Milling Station Record       Rock Art Record         Artifact Record       Photograph Record       Other (List):		3810		Marissa Moshier, Historic Preservation Planner City of Orange 300 E. Chapman Ave.
*Attachments: NONE Location Map Continuation Sheet(s) Building, Structure, and Object Record Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record Artifact Record Photograph Record Other (List):	Orange Count	y Assessor Records (2005).	Chattel Architecture (2005)	June 2015 *P10. Survey Type: (Describe)
		Archaeological Record Dis	trict Record Linear Feature Record	<ul> <li>Building, Structure, and Object Record</li> <li>Milling Station Record</li> <li>Rock Art Record</li> </ul>

State of California - DEPARTMENT OF PARTMENT OF PARTMENT OF PARTMENT OF PARTMENT OF PARTMENT	ARKS AND RE		Primary # HRI # *NRHP Status Code	3D
Page 2 of 3 B1. Historic Name:	Unknown	*Resource Name or #: (Assigned by Recorder)	FERNWOOD_E_3810	_APN_094-462-03
B2. Common Name:				
B3. Original Use:	RES	B4. Present Use:	RES	
*B5. Architectural Style	Mid-Cent	ury Modern		
*B6. Construction Histo	ory: (Construction	date, atlerations, and date of alterations)	Date of Construction:	1960 Historic Prehistoric Both
* <b>B7. Moved?</b> ✔ No 🗌	]Yes 🗌 Un	known Date:	Original Location:	
*B8. Related Features:				
*B9. Architect or Builde	er: Eichler	Homes - Anshen & Aller	1	
*B10. Significance:	Theme: Ar	chitecture Area: C	ity of Orange Pro	operty Type:
•		Tract (c. 1959 - 1965)		Applicable Criteria: _C
		ectural context as defined by theme, per Condition - Low level of		
Site Integrity:	Excertenc	Condition - Tow level (	or arteration as or	2003.
Opportunities				
B11. Additional Resour	ce Attributes:	(List attributes and codes)		
*B12. References:	Fichler "	raat Prochurse and		matorials from the Orange Dublic
Urange Daily News Library.	. Fichier 1	ract prochures and MIS	cerraneous Fichler	materials from the Orange Public

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
Status change since	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	ents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial ORA	
Page 3 of 3	×	*Resource Name or (Assigned by Record		FERNWOOD_E_3810A	APN_094-462-03
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plar	ner	Date Recorde	ed: June 2015
City of Orange					
300 E. Chapman Ave				Continuati	ion Update
Orange, CA 92866					<u> </u>
Years Surveyed:	2005, 2	2015		Description of Photo	):
Listed in National Register	:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.182	# of Units:	1	1	
Principal Building Sqft:	2536				
B6. Construction History (	Continued fr	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

## EXHIBIT "F"

# **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 819 E. Briardale Avenue APN: 374-222-23 Mills Act Contract Number: 399.0-21

## HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Joshua K. Partington and Michelle E. Partington, husband and wife as Community Property with Right of Survivorship ("Owner"), with reference to the following:

### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at 819 E. Briardale Avenue\_in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>374-222-23</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Joshua K. Partington and Michelle E. Partington
Attn.: City Clerk	819 E. Briardale Avenue
300 E. Chapman Avenue	Orange, CA 92865
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

## [Remainder of page intentionally left blank; signatures on next page]

## IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Joshua K. Partington

Dated: \_\_\_\_\_, 2021

Michelle E. Partington

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

## EXHIBIT "A"

## **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 73 of Tract 3978 in the City of Orange, County of Orange, State of California, as per map recorded in Book 140, Pages 17, 18, and 19, or Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 374-222-23]

## EXHIBIT "B"

## SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

## EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

## 819 E. Briardale Avenue

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Replace roof with new build-up roof system.	\$18,000	2022
2.	Paint the exterior of the house, including repair to wood trims and siding as needed.	\$12,000	2022
3.	Termite remediation and repair as recommended in the termite inspection report dated 6/29/2021.	\$3,000	2022
4.	Upgrade main electrical panel with new 150 or 200 amp panel to meet current building code requirements.	\$5,000	2024
5.	Repair front door, including wood doorframe trims around mistlite glass window.	\$2,000	2024
6.	Plumbing repairs for kitchen and bathroom, including clearing chronic clogging issues and realigning in-ground pipes to improve drainage.	\$3,000	2026
7.	Service existing automatic opener for original sliding garage doors.	\$1,000	2028
8.	Hire plumbing professional to investigate the existing radiate heat flooring system and either repair or abandon the system depending on the operating condition.	\$3,000	2031
TOTAL		\$47,000	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

	The Resources Agency ARKS AND RECREATION RD	Primary # HRI # Trinomial	ORA
	Other Listings:	NRHP Status Code	3D
	Review Code:	Reviewer:	Date:
Page 1 of 3	*Resource Name or #: (Assigned by Recorder)	BRIARDALE_E_819A	PN_374-222-23
P1. Other Identifier:	Fairmeadow Tract		
-	Not for Publication <b>V</b> Unrest		
		and P2c or P2d. Attach a location map as r	
	- E BRIARDALE	AVE ,	# City: <u>Orange</u> Zip: <u>92865</u> mN
e. Other Locationa			
*P3a Description: (Doc	cribe resource and its major elements. Include design	materials condition alterations size setti	ng and bourdnarias. Continues on Pg 3 )
Materials:	nue resource and its major elements. Include design	, materials, continuit, alterations, size, setti	ng, and bouunanes. Continues on Fg.o.,
Model LA-24R			
(List attributes and co *P4. Resources Preser		Object Site Element	of District District Other (Isolates, etc.) P5b. Description of Photo: 2005 (View, date, accession #)
<b>Element</b>			*P6. Date Constructed/ Age and Source:
Car Par		LAS. AN	
and the second			Historic Prehistoric Both
		- WW.,-	*P7. Owner and Address:
			* <b>P8: Recorded by:</b> (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner
Andread and an Andread		a the second second	City of Orange
- Lais		and the second se	300 E. Chapman Ave.
			Orange, CA 92866
*P11. Report Citation:	(Cite survey report and other sources, or enter "no		*P9. Date Recorded: June 2015
Orange County Ass Historic Resource	sessor Records (2005). Chattel es Survey.	Architecture (2005)	* <b>P10. Survey Type:</b> (Describe) Reconnaissance
	ONE   Location Map rchaeological Record  District Record		
DPR 523A (1/95)	rtifact Record Dhotograph R	ecord Other (List):	*Required Information

DEPARTMENT OF PA	The Resources Agency ARKS AND RECREATION JCTURE, AND OBJECT RECORD	Primary # HRI # *NRHP Status Code	3D
Page 2 of 3 B1. Historic Name:	*Resource Name or #: (Assigned by Recorder) Unknown	BRIARDALE_E_819A	PN_374-222-23
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style	Mid-Century Modern		
*B6. Construction Histo	Dry: (Construction date, atlerations, and date of alteration	s) Date of Construction:	1964 Historic Prehistoric Both
* <b>B7. Moved? V</b> No	above the roof line.	Original Location:	
*B8. Related Features:			
*B9. Architect or Builde	er: Eichler Homes		
*B10. Significance:	Theme: <u>Architecture</u> Area:	City of Orange Prope	erty Type: Residence
0	Eichler Tract (c. 1959 - 1965) of historical or architectural context as defined by theme, pr		Applicable Criteria: C
Structural Integrity:	Excellent Condition - Medium lev		
Site Integrity:			
Opportunities			
R11 Additional Resour	ce Attributes: (List attributes and codes)		
*B12. References:	List attributes and codes)		
	. Eichler Tract Brochures and mis	scellaneous Eichler ma	terials from the Orange Public

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
Status change since	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	nents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3	*	Resource Name or (Assigned by Record		BRIARDALE_E_819A	APN_374-222-23
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plar	nner	Date Recorde	ed: June 2015
City of Orange					
300 E. Chapman Ave				Continuati	ion Update
Orange, CA 92866					<u> </u>
Years Surveyed:	2005, 2	2015		Description of Photo	):
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.2532	# of Units:	1	*	
Principal Building Sqft:	2176	L.			
B6. Construction History (	Continued fro	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 226 E. La Veta Avenue APN: 390-102-13 Mills Act Contract Number: 400.0-21

## HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Edward Breckenridge, a single man ("Owner"), with reference to the following:

### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>226 E. La Veta Avenue</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>390-102-13</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Edward Breckenridge
Attn.: City Clerk	226 E. La Veta Avenue
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

## [Remainder of page intentionally left blank; signatures on next page]

## IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Edward Breckenridge

## "CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

By: \_\_\_\_\_\_\_ Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk

Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

## EXHIBIT "A"

## **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

The west one-half of Lots 12 and 13 of Block 2 of Tract Nutwood Place as per map recorded in Book 4, Page(s) 70 and 71 inclusive of Miscellaneous Maps, in the office of the County Recorder of Orange County, California.

[APN 390-102-13]

## EXHIBIT "B"

## SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Rewire house with new 200 meter service	\$10,800	2021
2.	Repair historic double-hung windows with	\$4,000	2021
	new ropes		
3.	Repair exterior siding, rafter tails, and front	\$3,200	2021
	porch 4x outriggers and beam		
4.	Whole house gas and water repipe	\$12,000	2021
5.	Asbestos abatement in all vents and ducts	\$1,200	2021
6.	Install new furnace and central air	\$8,800	2021
	conditioning		
7.	Level and plumb garage, add plywood shear	\$3,400	2021
	walls to garage		
8.	Add footing and stem wall to cantilevered	\$4,500	2022
	addition on west side of house		
9.	Insulate walls and attic with blow-in	\$3,800	2022
	fiberglass insulation		
10.	Sand and paint exterior of house and garage	\$8,200	2022
11.	Foundation retrofit and bolting to pier	\$9,000	2025
	supports		
TOTAL		\$68,900	

## 226 E. La Veta Avenue

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of Califo	ornia - The Resources Agency	Primary #	30-159058			
DEPARTMEN	T OF PARKS AND RECREATION	HRI #	038424			
PRIMARY F	RECORD	Trinomial	ORA			
		NRHP Status Code	1D			
	Other Listings:	Deviewer	Data			
	Review Code:	Reviewer:	Date:			
Page 1 of	3 *Resource (Assigne	Name or #: LA_VETA_E_226_AP: d by Recorder)	N_390-102-13			
P1. Other Ident	ifier:					
*P2. Location:	Not for Publication	✓ Unrestricted				
*a. County:	Orange	and (P2b and P2c or P2d. Attach a location map as	necessary.)			
*b. USGS 7.5	' Quad:	Date: T; R;	1/4 of;B.M.			
c. Address:	226 - E LA VETA	AVE	,# City: Orange Zip: 92866			
d. UTM: (Give	e more than one for large and/or linear resource	es) Zone ' mE/	mN			
e. Other Loc	ational Data:					
*D2a Decerintia						
		Include design, materials, condition, alterations, size, set	ting, and boudnaries. Continues on Pg.3.)			
-	rame – Wood siding					
		Front-facing gables and a combination of the house	ation clapboard siding along the e. The forwardmost gable forms the			
		e tapered piers connected by a sl				
*P3b. Resource (List attribu	Attributes: (HP2) Single fam tes and codes)					
*P4. Resources	Present:  V Building  Sti	ucture 🗌 Object 🔲 Site 🖌 Element	t of District District Other (Isolates, etc.)			
			P5b. Description of Photo: 2005 (View, date, accession #)			
	4					
			P6. Date Constructed/ Age and Source:			
			1917			
		the second states and the second states of the second states and the second states and the second states and the				
A			Historic Prehistoric Both			
			*PZ Owner and Address			
	800		*P7. Owner and Address:			
	The Party of the P					
			*P8: Recorded by: (Name, affiliation, and address)			
. 785			D. Gest, P. LaValley, D. Matsumoto			
			Chattel Architecture			
			13417 Ventura Blvd.			
the second second second second			Sherman Oaks, CA 91423			
			*P9. Date Recorded:			
*P11. Report Cit	ation: (Cite survey report and other source	es, or enter "none.")	April, 2005			
		Chattel Architecture (2005)				
		.) Historic Building Inventory (1982) Orange Historic Survey.	*P10. Survey Type: (Describe)			
opaace. net.	the the second seco		Reconnaissance			
*Attachments:		ocation Map  Continuation Sheet(s	s) 🕑 Building, Structure, and Object Record			
		strict Record	,			
		notograph Record  Other (List):				
DPR 523A (1/95)			*Required Information			

DEPARTMENT OF P	The Resources Agency ARKS AND RECREATION JCTURE, AND OBJECT RECORE	Primary # HRI # ) *NRHP Status Code	30-159058 038424 1D
Page 2 of 3 B1. Historic Name:	*Resource Name or #: (Assigned by Recorder) Unknown	LA_VETA_E_226API	N_390-102-13
B2. Common Name:			
B3. Original Use:	RES <b>B4. Present Use:</b>	RES	
*B5. Architectural Style	: Craftsman Bungalow		
*B6. Construction Histo	OFY: (Construction date, atlerations, and date of alteration	ons) Date of Construction:	1917 Historic Prehistoric Both
* <b>B7. Moved? </b> No 🗌	Yes Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builde	er: Unknown		
*B10. Significance:	Theme: Architecture Area:	City of Orange Pro	perty Type: Residence
•	e: Old Towne: Early Settlement (		Applicable Criteria: AC
(Discuss importance in terms of <b>Structural Integrity:</b>	of historical or architectural context as defined by theme, Excellent Condition - No appare		
Site Integrity:			Stracture.
Opportunities:			
	rce Attributes: (List attributes and codes)		
* <b>B12. References:</b> Orange Daily News			
		-	
<b>B13. Remarks:</b> (Continu Status change sin	es on Pg.3.) ace 1991 Survey: None.		Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel		

\*Date of Evaluation: September, 2005

(This space reserved for official comments.)

DPR 523B (1/95)

\*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	30-1590 038424 ORA	58	
Page 3 of 3	,	Resource Name or a (Assigned by Recorde		VETA_E_226AP	N_390-10	2-13	
Recorded by:							
D. Gest, P. LaVall	ley, D. Mat	sumoto		Date Record	led: Apr	il, 2005	
Chattel Architectu	ıre						
13417 Ventura Blvo	d.			Continua	tion	Update	
Sherman Oaks, CA	91423						
Years Surveyed:	1982 <b>,</b> 1	1991, 2005	D	escription of Phot	t <b>o:</b> 1991		
Listed in National Registe	er: 1997						
General Plan:	LDR	# of Buildings:	1		N N	and the second	
Planning Zone:	R-2-6	# of Stories:	1		Part		and the second
Lot Acre:	0.1483	# of Units:	1			In	
Principal Building Sqft:	1167	-	8/			THE THE	
B6. Construction History	(Continued fi	rom Pg.2):				2 P	
						2276	

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 505 E. Van Bibber Avenue APN: 390-421-23 Mills Act Contract Number: 401.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Jesse Davis and Jennifer Davis, husband and wife as joint tenants ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at 505 E. Van Bibber Avenue in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>390-421-23</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Jennifer Davis and Jesse Davis
Attn.: City Clerk	505 E. Van Bibber Avenue
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Jennifer Davis

Dated: \_\_\_\_\_, 2021

Jesse Davis

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву:\_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 24 in Block "A' of A.L.C. Bibber's resubdivision of Richard Farm Lot 37, in the City of Orange, County of Orange, State of California, as per map recorded in Book 4, Page 41 of Miscellaneous Maps, in the office of the County Recorder of Said County.

[APN 390-421-23]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Remove ficus trees from west property line along S. Shaffer Street, which are causing active sewer line damage.	\$2,000	2021
2.	Install new exterior screens on all windows.	\$1,700	2021
3.	Replace roof with new composition shingle roof system.	\$30,000	2022
4.	Termite remediation and repair as recommended in the termite inspection report dated 3/30/2021.	\$7,500	2025
5.	Paint exterior of the house.	\$7,500	2027
6.	Repair main sewer line connection to S. Shaffter Street, which has root intrusion damage from adjacent ficus trees.	\$7,200	2026
7.	Repair original wood windows, including serving of sash weights and rope systems.	\$5,000	2029
TOTAL		\$60,900	

#### 505 E. Van Bibber Avenue

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California -	The Resources Agency	Primary #	30-159207 038573		
	T OF PARKS AND RECREATION	HRI #			
PRIMARY RECO	RD	Trinomial	ORA		
		NRHP Status Code	1D		
	Other Listings: Review Code:	Reviewer:	Date:		
Page 1 of 3	*Resource Name or # (Assigned by Recorder		_APN_390-421-23		
P1. Other Identifier:					
*P2. Location:	Not for Publication Vinres				
*a. County:		and P2c or P2d. Attach a location map as			
*b. USGS 7.5' Quad		T; R; 			
0. Address.	an one for large and/or linear resources) Zone	AVE ' mE/	,# City: <u>Orange</u> Zip: <u>92866</u> mN		
e. Other Locationa		'`````			
e. Other Locationa					
*P3a. Description: (Des	cribe resource and its major elements. Include desig	n, materials, condition, alterations, size, se	tting, and boudnaries. Continues on Pg.3.)		
Materials: Frame	- Wood siding				
			ont facade is defined by a large,		
front-facing gab	le projection and includes a	grouping of three pairs	of multi-pane, casement windows.		
(List attributes and c *P4. Resources Preser		] Object 🔲 Site 🗹 Elemen	t of District District Other (Isolates, etc.) P5b. Description of Photo: 2005		
			(View, date, accession #)		
-		A State of the second s	*P6. Date Constructed/ Age and Source:		
			1920		
and the second					
	505		Historic 🗌 Prehistoric 🗌 Both		
			*P7. Owner and Address:		
T But			-		
			*P8: Recorded by: (Name, affiliation, and address)		
			D. Gest, P. LaValley, D. Matsumoto; J. Snow		
A state of the sta			Chattel Architecture		
takens Sound To 1			13417 Ventura Blvd.		
			Sherman Oaks, CA 91423		
			*P9. Date Recorded:		
*P11. Report Citation:	(,	,	April, 2005; November, 2009		
Historic Resource	sessor Records (2005). Chatte es Survey. AEGIS (1991) Histo	ric Building Inventory	*P10. Survey Type: (Describe)		
Update. Heritage	Orange County, Inc. (1982) O	range Historic Survey.	Reconnaissance		
••••					
	IONE Location Ma				
	rtifact Record Photograph				
DPR 523A (1/95)			*Required Information		

State of California - 7	The Resources Agency	Primary #	30-159207
DEPARTMENT OF PA	ARKS AND RECREATION	HRI #	038573
BUILDING, STRU	JCTURE, AND OBJECT RECORD	*NRHP Status Code	1D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	VAN_BIBBER_E_505_	_APN_390-421-23
B1. Historic Name:	William and Margaretha Hillebrecht	House	
B2. Common Name:			
B3. Original Use:	RES B4. Present Use: R	RES	
*B5. Architectural Style	Bungalow		
*B6. Construction Histo	<b>Ory:</b> (Construction date, atlerations, and date of alterations)	Date of Construction:	1920 V Historic Prehistoric Both
*B7. Moved? ☑ No [ *B8. Related Features:	Yes Unknown Date:	Original Location:	
*B9. Architect or Builde	er: Unknown		
*B10. Significance:	Theme: Architecture Area: C:	ity of Orange Pro	pperty Type: Residence
Period of Significance	e: Old Towne: Early Settlement (c.	1870 - 1920)	Applicable Criteria: AC
	of historical or architectural context as defined by theme, period		
Structural Integrity:	Excellent Condition - No apparent	change to origina.	l structure.
Site Integrity:			
Opportunities:			
	rs were William and Margaretha Hil 920, for a \$5,000 house at this si		lebrecht was a rancher. A permit was
B11. Additional Resour	ce Attributes: (List attributes and codes)		
* <b>B12. References:</b> Orange Daily News			
<b>B13. Remarks:</b> (Continue Status change sin	es on Pg.3.) .ce 1991 Survey: None.		(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel		
	n: November, 2009		
(This space reserved for official			
DPR 523B (1/95)			*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				HRI #		30-159207 038573 ORA	
Page 3 of 3 *Resource Name or #: (Assigned by Recorder)				VAN_BIBBER_E_505_APN_390-421-23			
Recorded by:							
D. Gest, P. LaVal	ley, D. Mat	sumoto; J. Snow		Date Record	ed:	April, 2005; November, 2009	
Chattel Architect	ure						
13417 Ventura Blvo	d.			Continuation	tion	Update	
Sherman Oaks, CA	91423						
Years Surveyed: 1982, 1991, 2005			Description of Phot	o:	1991		
Listed in National Registe	er: 1997						
General Plan:	LDR	# of Buildings:	1				
Planning Zone:	R-2-6	# of Stories:	1	and the second			
Lot Acre:	0.1569	# of Units:	1	in the second se		A A A A A A A A A A A A A A A A A A A	
Principal Building Sqft: 1730							
B6. Construction History	(Continued f	rom Pg.2):		57	I IIII		

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 522 E. Palm Avenue APN: 386-081-22 Mills Act Contract Number: 402-.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Michele M. Hanson, an unmarried woman Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>522 E. Palm Avenue</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>386-081-22</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange Attn.: City Clerk 300 E. Chapman Avenue Orange, CA 92866 Michele M. Hanson 522 E. Palm Avenue Orange, CA 92866

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Michele M. Hanson

"CITY"

#### CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

By: <u>Mark A. Murphy</u> Mayor

ATTEST:

Pamela Coleman City Clerk

APPROVED AS TO FORM:

Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:

The east 53.71 feet of Lot 8 of Cottage Home Tract, as shown on a map recorded in Book 5, Page 7 of Miscellaneous Maps in the County Recorder of Said County.

[APN 386-081-22]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

#### 522 E. Palm Avenue

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Upgrade electrical systems in house and detached garage to meet current building code requirements.	\$10,000	2021
2.	Install historically appropriate siding on boarded up service porch at the rear (south) side of the house.	\$1,200	2027
3.	Paint the exterior of the house and detached garage, including repair of siding and wood trim as needed.	\$8,000	2027
4.	Repair and reinforce structural systems of the detached garage, including repair of building tilt towards the east property line and installation of new foundation.	\$15,000	2022
5.	Repair or replace front porch stairs and railings in kind with new wood, in compliance with the Historic Preservation Design Standards for Old Towne.	\$3,000	2023
TOTAL		\$37,200	

## EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency	Primary #	30-159519 038885			
DEPARTMENT OF PARKS AND RECREATION	HRI #				
PRIMARY RECORD	Trinomial	ORA			
	NRHP Status Code	1D			
Other Listings: Review Code:	Deviewer	Data			
Review Code:	Reviewer:	Date:			
Page 1 of 3 *Resource Name (Assigned by Red		6-081-22			
P1. Other Identifier:					
*P2. Location: 🗌 Not for Publication	Inrestricted				
	(P2b and P2c or P2d. Attach a location map as r				
*b. USGS 7.5' Quad: Date		1/4 of;B.M.			
c. Address: 522 - E PALM	AVE ,	# City: Orange Zip: 92866			
d. UTM: (Give more than one for large and/or linear resources) Zor	ne mE/	mN			
e. Other Locational Data:					
*P3a. Description: (Describe resource and its major elements. Include	decian materials condition alterations size satt	ing and bourdnarias. Continues on Pa 3 )			
Materials: Frame - Wood siding		ing, and boddhanes. Continues of 1 g.s.,			
A single-story bungalow with ornamental la	n siding and single-gable ro	of with front-facing gable A small			
gabled entry portico is present which is a					
in front. The original door with plate gl					
*Dob Deserves Attributes (UDO) Cingle family	~~~~~				
*P3b. Resource Attributes: (HP2)Single family (List attributes and codes)	Jioperty				
*P4. Resources Present:   Building  Structure	e 🗌 Object 🗌 Site 🖌 Element	of District District Other (Isolates, etc.)			
	And the second se				
	AN CONTRACT	P5b. Description of Photo: 2005			
		(View, date, accession #)			
and a start of the		*P6. Date Constructed/ Age and Source:			
	V AND	1913			
	and the second second	✓ Historic  Prehistoric  Both			
		*P7. Owner and Address:			
		F7. Owner and Address.			
		*P8: Recorded by: (Name, affiliation, and address)			
		D. Gest, P. LaValley, D. Matsumoto			
	and the second				
and the second the second s		Chattel Architecture			
	and the second	13417 Ventura Blvd.			
the second with the second second		Sherman Oaks, CA 91423			
the second second		*P9. Date Recorded:			
*P11. Report Citation: (Cite survey report and other sources, or en		April, 2005			
Orange County Assessor Records (2005). Chattel Architecture (2005) Historic Resources Survey. AEGIS (1991) Historic Building Inventory *P10. Survey Type: (Describe)					
Update. Heritage Orange County, Inc. (1982		*P10. Survey Type: (Describe) Reconnaissance			
*Attachments: NONE Location	n Map 🛛 🗹 Continuation Sheet(s)	) 🗹 Building, Structure, and Object Record			
Archaeological Record District	Record 🛛 🗌 Linear Feature Record	d 🗌 Milling Station Record 🗌 Rock Art Record			
Artifact Record Photogr	aph Record 🗌 Other (List):				

\*Required Information

DPR 523A (1/95)

State of California - DEPARTMENT OF P BUILDING, STRU	ARKS AND RE		Primary # HRI # O *NRHP Status Code	30-159519 038885 1D
Page 2 of 3		*Resource Name or #:	PALM_E_522APN_	386-081-22
-	Unimeran	(Assigned by Recorder)		-
B1. Historic Name:	Unknown			
B2. Common Name: B3. Original Use:	RES	B4. Present Use:	RES	
*B5. Architectural Style	-	date, atlerations, and date of alterations	ons) Date of Construction	: 1913 ✔ Historic   Prehistoric   Both
* <b>B7. Moved</b> ? ✔ No [		known <b>Date:</b>	Original Location	
*B8. Related Features:				
*B9. Architect or Build	er: Unknowr	1		
*B10. Significance:	-	cchitecture Area:	City of Orange <b>P</b>	roperty Type: Residence
Period of Significanc	e: Old Town	e: Early Settlement	(c. 1870 - 1920)	Applicable Criteria: AC
				o address integrity. Continues on Pg.4.)
Structural Integrity:	Good Condi	tion - Minor and reve	ersible or appropria	te changes to original structure.
Site Integrity:				
Opportunities:				
B11. Additional Resour	rce Attributes	(List attributos and codos)		
* <b>B12. References:</b> Orange Daily News				
<b>B13. Remarks:</b> (Continu Status change sin		cvey: None.		(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert	Chattel		

\*Date of Evaluation: September, 2005

(This space reserved for official comments.)

DPR 523B (1/95)

\*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial		-159519 3885 A	
Page 3 of 3 *Resource Name or #: (Assigned by Recorder)		PALM_E_522APN_386-081-22				
Recorded by:						
D. Gest, P. LaValley		tsumoto		Date Record	ed:	April, 2005
Chattel Architecture 13417 Ventura Blvd. Sherman Oaks, CA 91				✓ Continuat	tion	Update
Years Surveyed:	1982,	1991, 2005		Description of Phot	<b>o</b> :	1991
Listed in National Register:	1997					
General Plan:	LDR	# of Buildings:	1		26.1	
Planning Zone:	R-3	# of Stories:	1	1418162	<b>9</b>	
Lot Acre:		# of Units:	1		AND I	and the line of th
Principal Building Sqft:	720					
B6. Construction History (Co	ontinued	from Pg.2):		E		

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 871 S. Cedarwood Street APN: 094-462-32 Mills Act Contract Number: 403.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Tristan Gonzalez and Fiona Gonzalez, husband and wife as joint tenants ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>871 S. Cedarwood Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>094-462-32</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Tristan Gonzalez and Fiona Gonzalez
Attn.: City Clerk	871 S. Cedarwood Street
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Tristan Gonzalez

Dated: \_\_\_\_\_, 2021

Fiona Gonzalez

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 129 of Tract No 3545, in the City of Orange, County of Orange, State of California, as per map recorded in Book 125, Page(s) 1-5 inclusive of Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 094-462-32]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

## **REHABILITATION/MAINTENANCE SCOPE OF WORK**

#### 871 S. Cedarwood Street

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Paint the exterior of the house, including repair of wood trim as needed.	\$12,000	2021
2.	Repair or replace deteriorated Eichler vertical groove redwood siding in kind as need on the north and south elevations, including repair of damaged roof beam ends on the east elevation.	\$22,000	2021
3.	Reconstruct missing mistlite glazed wall at carport/atrium to match original Eichler specification per tract model details.	\$4,800	2021
4.	Install new tankless water heater and water conditioner.	\$9,200	2021
5.	Restore front (west) elevation, removing existing enclosed patio, glazed door, and privacy fence and installing new aluminum- sash, double hung windows in conformance with the Orange Eichler Design Standards.	\$22,000	2021
6.	Remove existing carport enclosure and restore original atrium including new concrete paving.	\$18,000	2021
7.	Termite remediation and repairs as recommended in the termite inspection report dated 2/23/2021.	\$2,990	2021
8.	Repair and patch existing roof where needed.	\$4,000	2022
9.	Remove existing atrium paving [tile] and replace with concrete paving/wood trimmers to match original Eichler specification/design.	\$26,000	2021
TOTAL		\$120,990	

## EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The DEPARTMENT OF PARI PRIMARY RECORE	KS AND RECREATION	Primary # HRI # Trinomial NRHP Status Code Reviewer:	ORA 3D Date:
Page 1 of 3	*Resource Name or		APN_094-462-32
P1. Other Identifier: Fa	(Assigned by Recorde) irhaven Tract	r)	
P2. Location:	Not for Publication	stricted	
*a. County:	Orange and (P2	b and P2c or P2d. Attach a location map as	necessary.)
*b. USGS 7.5' Quad:			1/4 of;B.M
c. Address: 871	- S CEDARWOOD	ST	,# City: <u>Orange</u> Zip: <u>92869</u> mN
d. UTM: (Give more than or	ne for large and/or linear resources) Zone	' mE/	mN
e. Other Locational Da	ata:		
Materials: Model LJ-124			
(List attributes and codes P4. Resources Present:	Building Structure	Object 🗌 Site 🗌 Element	of District District Other (Isolates, etc <b>P5b. Description of Photo:</b> 2005 (View, date, accession #)
		NEW AND	
			*P6. Date Constructed/ Age and Source:
ster al a 🕅		A A I	<u>    1960  c  </u>
			Historic Prehistoric Both
			*P7. Owner and Address:
		y de la companya de l	*P8: Recorded by: (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner
And the second	A ADDIDANCE	871	
Constant Constant			City of Orange 300 E. Chapman Ave.
			Orange, CA 92866
			*Do Dote Doornale d
P11. Report Citation: (C	tite survey report and other sources, or enter "	none.")	* <b>P9. Date Recorded:</b> June 2015
Orange County Asses Historic Resources	sor Records (2005). Chatte	l Architecture (2005)	
HISCOLIC RESOURCES	Jui vey.		* <b>P10. Survey Type:</b> (Describe) Reconnaissance
		_	
Attachments: NON			,
	aeological Record 📋 District Rec act Record 👘 Photograph		d Milling Station Record Rock Art Reco
PR 523A (1/95)			*Required Informati

DEPARTMENT OF PA	The Resources Agency     Primary #       ARKS AND RECREATION     HRI #       JCTURE, AND OBJECT RECORD     *NRHP Status Code     3D
Page 2 of 3	*Resource Name or #: CEDARWOOD_S_871_APN_094-462-32 (Assigned by Recorder)
B1. Historic Name:	Unknown
B2. Common Name:	
B3. Original Use:	RES B4. Present Use: RES
*B5. Architectural Style	Mid-Century Modern
*B6. Construction Histo	ory: (Construction date, atlerations, and date of alterations) Date of Construction: 1960 [Historic Prehistoric Both
	to create second garage. Entryway enclosed with wall with glass block. Aluminum sliding A. Front door replaced.
* <b>B7. Moved?</b> ✔ No [	Yes Unknown Date: Original Location:
*B8. Related Features:	
*B9. Architect or Builde	er: Eichler Homes - A. Quincy Jones
*B10. Significance:	Theme: Architecture Area: City of Orange Property Type: Residence
(Discuss importance in terms of	e: Eichler Tract (c. 1959 - 1965) of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.) Excellent Condition - High level of alteration as of 2005.
Site Integrity:	
Opportunities	
B11. Additional Resour	rce Attributes: (List attributes and codes)
*B12. References:	
Orange Daily News Library.	. Eichler Tract Brochures and miscellaneous Eichler materials from the Orange Public

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
Status change since	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Marissa Moshier, City of Orange	
*Date of Evaluation:	September 2018	
(This space reserved for official comm	ents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3	و	Resource Name or (Assigned by Record		CEDARWOOD_S_871A	APN_094-462-32
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plan	ner	Date Record	ed: June 2015
City of Orange					
300 E. Chapman Ave				Continuat	ion 🗌 Update
Orange, CA 92866					
Years Surveyed:	2005,	2015		Description of Phote	o:
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1	_	
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:		# of Units:	1		
Principal Building Sqft:	2463				
B6. Construction History (	Continued fr	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 1298 N. Linda Vista Street APN: 379-011-02 Mills Act Contract Number: 404.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and John Martin Pack and Amy Kristine Hammontree, husband and wife as Community Property with Right of Survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>1298 N. Linda Vista Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>379-011-02</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	John Martin Pack and Amy Kristine Hammontree
Attn.: City Clerk	1298 N. Linda Vista Street
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

## IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

John Martin Pack

Dated: \_\_\_\_\_, 2021

Amy Kristine Hammontree

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

## EXHIBIT "A"

## **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 2 of Tract No. 4733 as per map recorded in Book 177, Pages 7-10 of Miscellaneous Maps in the office of the county recorder of said county.

[APN 379-011-02]

#### EXHIBIT "B"

### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	Completion Date
01	Maintenance and recoat of existing foam roof system. Total of two treatments within ten years.	\$10,000	2022 2028
02	Repair damage to front elevation wood gable beam.	\$3,700	2022
03	Repair damaged fascia boards within atrium.	\$475	2022
04	Remove and repair concrete sacking placed at exposed rear elevation to match original appearance.	\$2,800	2023
05	Correct drainage issue in the north side yard, causing water to pool and sit against the house foundation.	\$5,800	2024
06	Install new transparent UV tempering film on rear elevation windows and doors.	\$5,500	2025
07	Replace deteriorated wood siding with new Eichler vertical groove siding to match existing, with areas of particular concern on the south side of the atrium and south elevation.	\$17,000	2030
08	Replace downspouts with new to match original Eichler specifications.	\$2,700	2030
09	Relocate exterior wiring to the inside of exterior walls during replacement of the siding.	\$2,700	2030
10	Replace front door hardware with new Eichler round escutcheon plate and lock set.	\$500	2031
TOTAL		\$51,175	

# 1298 N. Linda Vista Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency		Primary #	
DEPARTMENT	OF PARKS AND RECREATION	HRI # Trinomial	ORA
PRIMARTR	ECORD	NRHP Status Code	3D
	Other Listings:	Deviewer	Data
	Review Code:	Reviewer:	Date:
Page 1 of 3	(Assigned by Recorder)		3APN_379-011-02
P1. Other Identi	fier: Fairhills Tract		
*P2. Location:	Not for Publication		
*a. County:		and P2c or P2d. Attach a location map as r	
	Quad: Date: 1298 - N LINDA VISTA		;B.M.
	more than one for large and/or linear resources) <b>Zone</b>	' mE/	,# City: <u>Orange</u> Zip: <u>92869</u> mN
e. Other Loc			
*P3a. Description	n: (Describe resource and its major elements. Include design	n, materials, condition, alterations, size, sett	ing, and boudnaries. Continues on Pg.3.)
Materials:			
Model 1744R			
	Attributes: (HP2)Single family prop as and codes) Present:  Building Structure		of District District Other (Isolates, etc.) P5b. Description of Photo: 2005 (View, date, accession #) *P6. Date Constructed/ Age and Source:
	E LANDER	A CONSTRUCTION OF A CONSTRUCTION OFFANICA A CONSTRUCTURA A CONSTRUCTION OFFANICA A CONSTRUCTURA A CONSTRUCTURA A CONSTRUCTURA A CONSTRUCTURA A CONSTRUCTURA A CONSTRUCTICA A CONSTRUCTURA	1962 c
			🗌 Historic 🗌 Prehistoric 🗌 Both
			*P7. Owner and Address:
	to the second se	1298	* <b>P8: Recorded by:</b> (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner
	Contraction of the second s		City of Orange
			300 E. Chapman Ave.
			Orange, CA 92866
*P11. Report Cita	(		* <b>P9. Date Recorded:</b> June 2015
	y Assessor Records (2005). Chattel ources Survey.	Architecture (2005)	* <b>P10. Survey Type:</b> (Describe) Reconnaissance
*Attachments:	NONE     Location Mag       Archaeological Record     District Reco	rd Linear Feature Recor	
DPR 523A (1/95)	Artifact Record Photograph F	Record Other (List):	*Required Information

DEPARTMENT OF PA	he Resources Agency RKS AND RECREATION CTURE, AND OBJECT RECORD	Primary # HRI # *NRHP Status Code	3D
Page 2 of 3 B1. Historic Name:	*Resource Name or #: (Assigned by Recorder)	linda_vista_n_12	98APN_379-011-02
B1. Historic Name:	Unknown		
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style	Mid-Century Modern		
*B6. Construction Histor Front door replace	ry: (Construction date, atlerations, and date of alterations)	Date of Construction	Historic Prehistoric Both
*B7. Moved? ✔ No *B8. Related Features: *B9. Architect or Builde *B10. Significance:	r: Eichler Homes - A. Quincy Jone		operty Type:
•	: Eichler Tract (c. 1959 - 1965)		Applicable Criteria: _C
	historical or architectural context as defined by theme, per Excellent Condition - Low level of		
Site Integrity:			
Opportunities			

B11. Additional Resource Attributes: (List attributes and codes)

#### \*B12. References:

Orange Daily News. Eichler Tract Brochures and miscellaneous Eichler materials from the Orange Public Library.

<b>B13. Remarks:</b> (Continues on Status change since	Pg.3.) 1991 Survey: Not previously surveyed.	(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	ients.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial	ORA	
Page 3 of 3	*	Resource Name or (Assigned by Record		LINDA_VISTA_N_1298_	_APN_379-011-02
Recorded by: Marissa Moshier, Historic Preservation Planner		ner	Date Recorded	: June 2015	
City of Orange 300 E. Chapman Ave Orange, CA 92866				Continuatio	n 🗌 Update
Years Surveyed:	2005, 2	2015		Description of Photo:	
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1791	# of Units:	1		
Principal Building Sqft:	2573	L.			
B6. Construction History (	Continued fro	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 880 S. Woodland Street APN: 094-463-05 Mills Act Contract Number: 405.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Scott Penttila and Christina Penttila, husband and wife as joint tenants ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>880 S</u>. Woodland Street in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>094-463-05</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Scott Penttila and Christina Penttila
Attn.: City Clerk	880 S. Woodland Street
300 E. Chapman Avenue	Orange, CA 92865
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

## [Remainder of page intentionally left blank; signatures on next page]

## IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Scott Penttila

Dated: \_\_\_\_\_, 2021

Christina Penttila

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

Ву: \_\_\_\_\_

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

## EXHIBIT "A"

## **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 89 od Tract No 3545, in the City of Orange, County of Orange, State of California, as per map recorded in Book 125, Page(s) 1 to 5 inclusive of Miscellaneous Maps, in the office of the County Recorder of County.

[APN 094-463-05]

#### EXHIBIT "B"

### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

# 880 S. Woodland Street

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>		
	Replace vinyl window on the front (east) elevation with a new aluminum-sash window to match original style and size.	\$1,000	2022		
	Replace five (5) vinyl windows on the south elevation with new aluminum-sash window to match original style and size.	\$5,000	2022		
	Termite remediation and repair as recommended in the termite inspection report dated 6/24/2021.	\$2,000	2023		
	Limited replacement of exterior siding and trim damaged due to sun exposure, as well as repair seams from previous incomplete siding replacement.	\$6,500	2023		
	Maintenance of sliding doors and screens into the atrium.	\$1,000	2023		
	Paint the exterior of the house.	\$15,000	2023		
	Repair existing beams and deteriorated fascia within the atrium and on the rear (west) elevation of the house.	\$6,000	2023		
	Replace damaged window film on the rear (west) elevation with new transparent UV/temper film in compliance with the Orange Eichler Design Standards.	\$4,000	2023		
	Replace carport and driveway concrete with new to match original finish and configuration. Wood slab dividers may be replaced with alternative material consistent with the Orange Eichler Design Standards.	\$15,000	2024		
	Replace concrete in the atrium	\$6,000	2024		
	Replace existing HVAC system with a new system in compliance with the Orange Eichler Design Standards.	\$22,000	2026		
	Maintenance and recoat of existing foam roof system. To be completed two times within the next ten years.	\$10,000	2026 and 2031		
TOTAL		\$93,500			

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION		Primary #	
		HRI # Trinomial	ORA
PRIMARY	RECORD	NRHP Status Code	3D
	Other Listings:		
	Review Code:	Reviewer:	Date:
Page 1 of	3 *Resource Name or # (Assigned by Recorder		?N_094-463-05
P1. Other Ident	ifier: Fairhaven Tract		
*P2. Location:	Not for Publication	tricted	
*a. County:		o and P2c or P2d. Attach a location map as i	
*b. USGS 7.5	' Quad: Date:	T; R; _	
c. Address:			,# City: <u>Orange</u> Zip: <u>92869</u>
	e more than one for large and/or linear resources) <b>Zone</b>	' mE/ ,	mN
e. Other Loc	cational Data:		
*P3a. Descriptio	n: (Describe resource and its major elements. Include desig	n, materials, condition, alterations, size, sett	ing, and boudnaries. Continues on Pg.3.)
Materials:			
Model LJ-12	4		
*P3b. Resource (List attribu *P4. Resources	Attributes: (HP2)Single family prop tes and codes) Present:  Building Structure		of District District Other (Isolates, etc.)  P5b. Description of Photo: 2005 (View, date, accession #)  *P6. Date Constructed/ Age and Source:  1960 c Historic Prehistoric Both
			*P7. Owner and Address: *P8: Recorded by: (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner
		- Contraction of the	City of Orange
			300 E. Chapman Ave.
			Orange, CA 92866
*P11. Report Cit	(ence surrey) report and surrer sources, or enter in		* <b>P9. Date Recorded:</b> June 2015
	ty Assessor Records (2005). Chatte sources Survey.	L Architecture (2005)	* <b>P10. Survey Type:</b> (Describe) Reconnaissance
*Attachments:	<ul> <li>NONE</li> <li>Location Ma</li> <li>Archaeological Record</li> <li>District Record</li> <li>Artifact Record</li> <li>Photograph</li> </ul>	ord Linear Feature Recor	, <b>-</b>
DPR 523A (1/95)			*Required Information

DEPARTMENT OF PA	The Resources Agency ARKS AND RECREATION ICTURE, AND OBJECT RECORD	Primary # HRI # *NRHP Status Code	3D
Page 2 of 3 B1. Historic Name:	*Resource Name or #: (Assigned by Recorder)	WOODLAND_S_880	APN_094-463-05
B1. Fisione Name:	Unknown		
B3. Original Use:	RES <b>B4. Present Use:</b>	RES	
*B5. Architectural Style			
-	<b>Pry:</b> (Construction date, atlerations, and date of alterations	Date of Construction:	1960 Historic Prehistoric Both
	In 2014, installed roof mounted		
*B7. Moved? 🖌 No 🗌	Yes Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builde	r: Eichler Homes - A. Quincy Jon	es	
*B10. Significance:	Theme: <u>Architecture</u> Area:	City of Orange Pro	pperty Type: Residence
Period of Significance	Eichler Tract (c. 1959 - 1965)		Applicable Criteria:
(Discuss importance in terms of <b>Structural Integrity:</b>	f historical or architectural context as defined by theme, per Excellent Condition - Low level		
Site Integrity:	Excertenc condition how rever	or arteración as or	2003.
Opportunities			
B11. Additional Resour	ce Attributes: (List attributes and codes)		
*B12. References:			
Orange Daily News Library.	. Eichler Tract Brochures and mis	cellaneous Eichler	materials from the Orange Public
<b>B13. Remarks:</b> (Continue Status change sin	s on Pg.3.) ce 1991 Survey: Not previously s	urveyed.	(Sketch Map with North arrow required.)
*B14. Evaluator:	Robert Chattel		

\*Date of Evaluation: September 2005

(This space reserved for official comments.)

DPR 523B (1/95)

\*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET			Primary # HRI # Trinomial	ORA	
Page 3 of 3	لا	*Resource Name or # (Assigned by Recorder)		NOODLAND_S_880AP	N_094-463-05
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plann	er	Date Recorde	d: June 2015
City of Orange					
300 E. Chapman Ave.			Continuati	on Update	
Orange, CA 92866					·
Years Surveyed:	2005,	2015		Description of Photo	
Listed in National Registe	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1837	# of Units:	1		
Principal Building Sqft:	2263				
B6. Construction History (	Continued fr	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 153 N. Center Street APN: 039-254-05 Mills Act Contract Number: 406.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Carol M. Tallichet, Trustee of the Carol M. Tallichet Family Trust dated May 19, 2016 ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>153 N. Center Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>039-254-05</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange Attn.: City Clerk 300 E. Chapman Avenue Orange, CA 92866 Carol M. Tallichet 153 N. Center Street Orange, CA 92866

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Carol M. Tallichet, Trustee

#### "CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

By: \_\_\_\_\_\_\_ Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk

Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 6 in Block "B" or "The Library Tract" in the City of Orange, County of Orange, State of California, as per map recorded in Book 5, Page 21 of Miscellaneous Maps, in the office of the County Recorder of said Orange County.

[APN 039-254-05]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Waterproof basement to prevent flooding.	\$15,000	2022
	Install gutter at eave above basement entry.		
	Repair and/or replace damaged basement		
	door to match original condition		
2.	Repair deteriorated wood at base of garage	\$1,000	2022
	door		
3.	Repair wood screens on kitchen window	\$1,000	2022
4.	Replace back doors on garage with	\$5,000	2022
	compatible wood doors		
5.	Repair broken rope and weight on window at	\$1,000	2023
	front elevation of house		
6.	Repair woodwork at French doors at rear of	\$1,000	2023
	house to prevent sticking		
7.	Repair and/or replace deteriorated wood	\$5,000	2024
	siding and trim in limited areas around house		
8.	Repaint exterior of house and garage	\$20,000	2025
9.	Repair and patch concrete on front porch	\$5,000	2025
10.	Retrofit and bolt house to foundation	\$25,000	2028
11.	Reroof house	\$18,000	2030
TOTAL		\$97,000	

#### 153 N. Center Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION			Primary #	30-159308	30-159308			
			HRI #	038674				
PRIMARY RECORD			Trinomial	ORA				
		NRH	IP Status Code	1D				
	Other Listings:							
	Review Code:	Re	viewer:		Date:			
Page 1 of 3	*Resource Nam (Assigned by Re		ter_n_153apn	1_039-254-05				
P1. Other Identifier:								
*P2. Location:	ot for Publication	Unrestricted						
*a. County:	Orange and	d (P2b and P2c or P2d.	Attach a location map a	s necessary.)				
*b. USGS 7.5' Quad:	Dat	te: T _	; R;	1/4 of1	1/4 of Sec	_;B.M		
c. Address: 153 -	N CENTER		ST	,# City	: Orange Zip	<b>92866</b>		
d. UTM: (Give more than one	e for large and/or linear resources) Zo	ne '	mE/	mN				
e. Other Locational Dat	a:							
*P3a. Description: (Describe n		le design, materials, condi	ition, alterations, size, se	etting, and boudnaries.	Continues on Pg.3.)			
Materials: Frame - Wo	od siding							
	man house with wide 1							
	There also is presen ination window/vent t							
porch and is support	ed by arroyo stone pi							
original door								
	(HP2)Single family	property						
(List attributes and codes) *P4. Resources Present:	✓ Building Structur	re 🗌 Object 🗌	Site 🖌 Elemen	t of District 🗌 [	District 🗌 Other	(Isolates etc.)		
14. Resources i resent.						(19010100), 010.)		
				P5b. Descrip	otion of Photo:	2005		
		* Aller	A VINTER T	in the second	, accession #)			
	*							
				*P6. Date Cor	nstructed/ Age a	nd Source:		
F. Pitt			and the R		1910			
A State				t Histori				
			1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 - 1988 -	Histori	c Prehistori	c 🔄 Both		
		1. 30		*P7. Owner a	nd Addross;			
				F7. Owner a	nu Audress.			
			the all and					
		453						
			and the second	🎽 *P8: Recorde	d by: (Name, affilia	tion, and address)		
					P. LaValley,	D.		
A REAL PROPERTY		and the second second		Matsumoto	)			
		and the set of the		Chattel A	Architecture			
	A DE REAL STREET	North Marine Start		13417 Ver	ntura Blvd.			
				Sherman (	Daks, CA 9142	23		
*P11 Poport Citation				*P9. Date Rec				
- ,	e survey report and other sources, or or Records (2005). Ch.	,	ure (2005)	April, 20	JU5			
	urvey. AEGIS (1991) H			*P10. Survev	Type: (Describe)			
	nge County, Inc. (198			Reconnais				
*Attachments: NONE	E Locatio	on Map 🛛 🗹 Co	ontinuation Sheet(	s) 🗹 Building, S	Structure, and Ob	ject Record		
Archa	eological Record 🗌 District	t Record 🛛 🗌 Li	near Feature Reco	ord 🗌 Milling Sta	ation Record 🗌 F	Rock Art Record		
	ct Record 🛛 🗌 Photog	graph Record 🗌 O	ther (List):					
DPR 523A (1/95)			_		*Requir	red Informatio		

State of California - The DEPARTMENT OF PAR	KS AND RECREATION	Primary # HRI #	30-159308 038674
BUILDING, STRUC	TURE, AND OBJECT RECORD	*NRHP Status Code	1D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	CENTER_N_153API	1_039-254-05
	F. Lush House		
B2. Common Name:			
B3. Original Use:		RES	
*B5. Architectural Style:	Craftsman		
*B6. Construction History	(Construction date, atlerations, and date of alterations)	Date of Construction:	1910
* <b>B7. Moved?</b> ✔ No	/es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	M.F. Lush (Builder)		
*B10. Significance: Th	eme: Architecture Area: C	ity of Orange <b>Pr</b>	operty Type: Residence
Period of Significance:	Old Towne: Early Settlement (c.	1870 - 1920)	Applicable Criteria: AC
	storical or architectural context as defined by theme, per		
<b>3</b> ,	ood Condition - No apparent char	nge to original str	ucture.
Site Integrity:			
Opportunities:			
and later built thi	s house for his family. His da	ughter Helen Lush s	He first lived in the Nutwood Tract till lives in this house. Mr. Lush on. He was also a field picking boss
D44 Additional Decourses	A44-16-16-1		
*B12. References:	Attributes: (List attributes and codes)		
Orange Daily News.			
B13. Remarks: (Continues of	n Pg.3.)		(Sketch Map with North arrow required.)
Status change since	1991 Survey: None.		
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:	September, 2005		
(This space reserved for official com	ments.)		+
DPR 523B (1/95)			*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	30-159308 038674 ORA
Page 3 of 3	*	Resource Name or # (Assigned by Recorder		R_N_153APN_	039-254-05
Recorded by:					
D. Gest, P. LaVall	ey, D. Mat	sumoto		Date Recorde	ed: April, 2005
Chattel Architectu					
13417 Ventura Blvd				Continuat	ion Update
Sherman Oaks, CA	91423				
Years Surveyed:	1982, 1	1991, 2005	Dese	cription of Photo	<b>D:</b> 1991
Listed in National Registe	er: 1997				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-4	# of Stories:	2		And the second sec
Lot Acre:	0.1573	# of Units:	1	1	
Principal Building Sqft:	1178			ATT .	
B6. Construction History	(Continued fr	rom Pg.2):		SO	

B13. Remarks (Continued from Pg.2):

#### P3a. Description (Continued from Pg.1):

with oval pane is still present.

\*Required Information

#### EXHIBIT "F"

# **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 1719 N. Shaffer Street APN: 374-215-26 Mills Act Contract Number: 407.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Alan James Lowry IV and Aimee Ricafrente Lowry, husband of wife as Community property with Right of Survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>1719 N. Shaffer Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>374-215-26</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Alan James Lowry IV and Aimee Ricafrente Lowry
Attn.: City Clerk	1719 N. Shaffer Street
300 E. Chapman Avenue	Orange, CA 92865
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Alan James Lowry IV

Dated: \_\_\_\_\_, 2021

Aimee Ricafrente Lowry

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 26 of Tract 3978, in the City of Orange, County of Orange, State of California, as per map recorded in Book 140, Page(s) 17 through 19, inclusive of Miscellaneous Maps in the office of the County Recorder of Said County.

[APN 374-215-26]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Replace single-pane un-tempered glass on the rear (east) elevation with new tempered glass.	\$12,500	2021
2.	Replace missing chimney cap.	\$300	2021
3.	Install new mini-split HVAC system for bedrooms on the west side of the house.	\$8,000	2023
4.	Repair damage to atrium and front elevation features, including repair of wood "ladder" on front atrium wall, repair or replace existing wood slab door and frame.	\$2,000	2023
5.	Repair or replace deteriorated siding on the exterior of the house with new Eichler vertical groove siding as needed, the paint exterior of the house. Specific areas of concern include the south wall of the atrium and north elevation.	\$11,000	2024
6.	Prune of remove trees in the atrium and along the south property line which are currently causing damage to the house.	\$2,300	2025
7.	Maintenance of existing foam roof, including repair of skylights as needed.	\$5,000	2027
TOTAL		\$41,100	

#### 1719 N. Shaffer Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The Resources Agency		Primary #	
	T OF PARKS AND RECREATION	HRI # Trinomial	ORA
PRIMARY F	RECORD		3D
	Other Listings:		
	Review Code:	Reviewer:	Date:
Page 1 of	3 *Resource Na (Assigned by		1_374-215-26
P1. Other Ident	ifier: Fairmeadow Tract		
*P2. Location:	Not for Publication	Unrestricted	
*a. County:		nd (P2b and P2c or P2d. Attach a location map as ne	
*b. USGS 7.5	' Quad: D	Date: T; R;	
c. Address:		ST ,:	
	e more than one for large and/or linear resources)	Zone ' mE/ _	mN
e. Other Loc	ational Data:		
*P3a. Descriptio	n: (Describe resource and its major elements. Inc	lude design, materials, condition, alterations, size, settin	g, and boudnaries. Continues on Pg.3.)
Materials:			
Model LA-241	R		
*P4. Resources	Present:  Building  Struct	ture Object Site Element o	f District District Other (Isolates, etc.)  P5b. Description of Photo: 2005 (View, date, accession #)  *P6. Date Constructed/ Age and Source:  1964 c Historic Prehistoric Both  *P7. Owner and Address:
			* <b>P8: Recorded by:</b> (Name, affiliation, and address) Marissa Moshier, Historic Preservation Planner City of Orange 300 E. Chapman Ave. Orange, CA 92866
*P11. Report Cit	<b>ation:</b> (Cite survey report and other sources, ty Assessor Records (2005). C		*P9. Date Recorded: June 2015
	sources Survey.		*P10. Survey Type: (Describe) Reconnaissance
*Attachments:	Archaeological Record Distr	tion Map Continuation Sheet(s) ict Record Linear Feature Record ograph Record Other (List):	-
DPR 523A (1/95)			*Required Information

DEPARTMENT OF PA	The Resources Agency ARKS AND RECREATION ICTURE, AND OBJECT RECORD	Primary # HRI # *NRHP Status Code	3D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	SHAFFER_N_1719AF	PN_374-215-26
1	Unknown		
B2. Common Name:	RES <b>B4. Present Use:</b>	RES	
B3. Original Use:		KE5	
*B5. Architectural Style	· · · · · · · · · · · · · · · · · · ·		
Low CMU wall adde	<b>PTY:</b> (Construction date, atlerations, and date of alterations d on front yard.	) Date of Construction:	1964 Historic Prehistoric Both
* <b>B7. Moved?</b> ✔ No 🗌	Yes Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builde	r: Eichler Homes		
*B10. Significance:	Theme: <u>Architecture</u> Area:	City of Orange Prop	perty Type:
•	Eichler Tract (c. 1959 - 1965) f historical or architectural context as defined by theme, per		Applicable Criteria: C ddress integrity. Continues on Pg.4.)
Structural Integrity:	Excellent Condition - Low level	of alteration as of a	2005.
Site Integrity:			
Opportunities			
B11. Additional Resour	<b>ce Attributes:</b> (List attributes and codes)		

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September 2005	
(This space reserved for official comm	nents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	ORA
Page 3 of 3	*	Resource Name or (Assigned by Recorde		SHAFFER_N_1719A	PN_374-215-26
Recorded by:					
Marissa Moshier, H	istoric Pr	eservation Plan	ner	Date Recorde	ed: June 2015
City of Orange					
300 E. Chapman Ave	•			Continuat	ion Update
Orange, CA 92866				_	-
Years Surveyed:	2005, 2	2015		Description of Photo	<b>)</b> :
Listed in National Register	r:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1938	# of Units:	1		
Principal Building Sqft:	2139				
B6. Construction History (	Continued fr	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 460 S. Cambridge Street APN: 390-131-83 Mills Act Contract Number: 408.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Craig McGowan and Shannon McGowan, husband and wife as Community Property with Right of Survivorship ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>460 S. Cambridge Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>390-131-83</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Craig McGowan and Shannon McGowan
Attn.: City Clerk	460 S. Cambridge Street
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Craig McGowan

Dated: \_\_\_\_\_, 2021

Shannon McGowan

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Parcel 1 of Parcel Map No. 85-455, in the City of Orange, County of Orange, State of California, as per map recorded in Book 214, Page(s) 47 and 48 of Parcel Maps, in the office of the County Recorder of Said County.

[APN 390-131-83]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

# 460 S. Cambridge Street

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Paint the exterior of the house and garage, including repair of water damage to roof eaves as needed.	\$8,000	2023
2.	Hire professional to investigate removal of spray on stucco texture currently coating original siding, porch posts and roof beams. Depending on condition, the stucco may be removed to restore original wood, sanded down to remove texture, or other treatment recommended approved in conjunction with the city's Historic Preservation Planner.	\$10,000	2023
3.	Seismic retrofit of house foundation.	\$10,000	2025
4.	Repair and refinish original interior hardwood floors in the main living area and front bedrooms.	\$5,000	2027
5.	Repair red brick on front porch, including repointing mortar and replacing cracked bricks as needed.	\$1,500	2027
6.	Replace knob and tube electrical wiring under the house with new wiring to meet current building code requirements.	\$6,000	2029
7.	Maintenance of original wood windows, including sash weights, sanding, and reglazing as needed.	\$3,000	2031
8.	Pruning of mature avocado tree on the north side of the property adjacent to the driveway every 3 years.	\$2,000	2022/2025/ 2028/2031
9.	Replace HVAC system with new central system in compliance with the Historic Preservation Design Standards for Old Towne.	\$12,000	2031
TOTAL		\$57,500	

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The I DEPARTMENT OF PARK PRIMARY RECORD		Primary # HRI # Trinomial NRHP Status Code Reviewer:	ORA 5D1 Date:
			Date.
Page 1 of 3	*Resource Name or #: (Assigned by Recorder)	CAMBRIDGE_S_460A	APN_390-131-83
P1. Other Identifier:			
*P2. Location: No *a. County: *b. USGS 7.5' Quad:		ricted and P2c or P2d. Attach a location map as T; R;;	
<b>c. Address:</b> 460 -	S CAMBRIDGE	, ``, `,,,,,,,	
d. UTM: (Give more than one	for large and/or linear resources) Zone	' mE/	
<b>Materials:</b> Frame - Wo	esource and its major elements. Include design	n, materials, condition, alterations, size, sett	ing, and boudnaries. Continues on Pg.3.)
*P3b. Resource Attributes: (List attributes and codes) *P4. Resources Present:	(HP2)Single family prop Building Structure		of District District Other (Isolates, etc.) P5b. Description of Photo: 2005 (View, date, accession #)
			*P6. Date Constructed/ Age and Source:
	<b>国际教会性</b>		1921 c
Strand See	A A A A A A A A A A A A A A A A A A A	and the	✓ Historic
			*P7. Owner and Address:
hilliniko iholi	uffinflight officiality		* <b>P8: Recorded by:</b> (Name, affiliation, and address) D. Gest, P. LaValley, D. Matsumoto
			Chattel Architecture 13417 Ventura Blvd.
			Sherman Oaks, CA 91423
	e survey report and other sources, or enter "no		* <b>P9. Date Recorded:</b> April 2005
Orange County Assess Historic Resources S Update.	or Records (2005). Chattel urvey. AEGIS (1991) Histor	Architecture (2005) ic Building Inventory	* <b>P10. Survey Type:</b> (Describe) Reconnaissance
_	E Location Map eological Record District Record t Record Photograph F	rd Linear Feature Recor	
DPR 523A (1/95)			*Required Information

626

State of California - The		• •	Primary #	
DEPARTMENT OF PAR			HRI #	
BUILDING, STRUC	TURE, A	ND OBJECT RECORD	*NRHP Status Code	5D1
Page 2 of 3		*Resource Name or #: (Assigned by Recorder)	CAMBRIDGE_S_460_	_APN_390-131-83
B1. Historic Name: Un	nknown			
B2. Common Name:				
B3. Original Use:	RES	B4. Present Use:	RES	
*B5. Architectural Style:	Crafts	nan Bungalow		
*B6. Construction History	Constructio	n date, atlerations, and date of alterations)	Date of Construction:	. <u>1921</u>
	Yes 🗌 U	nknown Date:	Original Location:	
*B8. Related Features:				
*B9. Architect or Builder:	Unknow	'n		
*B10. Significance: Th	neme: A	rchitecture Area: C	City of Orange Pro	operty Type:
Period of Significance:	Old Tow	ne: Interwar Development	c (c. 1921 - 1941)	Applicable Criteria: N/A
		nitectural context as defined by theme, per		
• • •	xcellent	Condition - No apparent	t change to origina	ll structure.
Site Integrity:				
Opportunities:				
B11. Additional Resource	Attributes	(List attributes and codes)		
*B12. References:				
Orange Daily News.				
B13. Remarks: (Continues o				(Sketch Map with North arrow required.)
Status change since	1991 Su	rvey: Re-evaluation.		
*B14. Evaluator:	Dobert	Chattal		
*Date of Evaluation:		ber 2005		
(This space reserved for official com				-
	/			
DPR 523B (1/95)				*Required Information

State of California - The DEPARTMENT OF PARK CONTINUATION SH	S AND REC	• •		Primary # HRI # Trinomial	ORA
Page 3 of 3	*	Resource Name or #: (Assigned by Recorder)	CAMBRII	DGE_S_460A1	PN_390-131-83
Recorded by:					
D. Gest, P. LaValle	ey, D. Mat	sumoto		Date Recorded	<b>d:</b> April 2005
Chattel Architectur	îe				
13417 Ventura Blvd.				Continuatio	on Update
Sherman Oaks, CA 9	1423				<u> </u>
Years Surveyed:	1991, 2	2005	Descr	ription of Photo:	:
Listed in National Register:	:				
General Plan:	LMDR	# of Buildings:	1		
Planning Zone:	R-2-6	# of Stories:	1		
Lot Acre:		# of Units:	1		
Principal Building Sqft:	1876				
B6. Construction History (C	Continued fro	om Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 212 E. Chapman Avenue APN: 390-382-03 Mills Act Contract Number: 409.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Albert J. Ricci and Mary K. Ricci, Trustees of The Ricci Family Revocable Trust dated February 11, 2006 ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>212 E. Chapman Avenue</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>390-382-03</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	The Ricci Family Revocable Trust
Attn.: City Clerk	606 E. Chapman Avenue
300 E. Chapman Avenue	Orange, CA 92866
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Albert J. Ricci, Trustee

Dated: \_\_\_\_\_, 2021

Mary K. Ricci, Trustee

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

The west 22 feet of Lot 11 of Block B in the Town of Orange, in the City of Orange, County of Orange, State of California, as per map recorded in Book 2, Pages 630 and 631 of Miscellaneous Maps, in the office of the County Recorder of Los Angeles County, California.

[APN 390-382-03]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

#### <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

#### EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Remove all non-bearing and non-original	\$25,000	2021
	interior partitions		
2.	Install new roof	\$20,000	2021
3.	Remove section of interior side of non-	\$10,000	2022
	original front wall to uncover area of		
	transom windows above existing storefronts.		
	Repair or replace transoms based on		
	evidence uncovered by exploratory removal		
4.	Paint exterior of building	\$10,000	2022
5.	Remove non-original linoleum and carpet	\$15,000	2022
	floors and refinish original wood floors		
6.	Upgrade electrical panel and rewire building	\$20,000	2023
	as necessary		
7.	Repair basement access. Remove non-	\$20,000	2023
	original enclosure around basement access.		
	Repair covered wood windows on rear		
	elevation		
8.	Replace roof-mounted HVAC unit and	\$24,000	2023
	upgrade ducting as necessary		
9.	Repair and install new plumbing throughout	\$15,000	2023
TOTAL		\$159,000	

# 212 E. Chapman Avenue

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The F	lesources Agency	urces Agency Primary #		30-162527	
DEPARTMENT OF PARKS A PRIMARY RECORD	• •	HRI #	096932		
		Trinomial	ORA		
		NRHP Status Code	1D		
	Other Listings: Review Code:	Reviewer:	Date:		
		Keviewei.	Date.		
Page 1 of 3	*Resource Name or # (Assigned by Recorder)		APN_390-382-03		
P1. Other Identifier:					
*P2. Location: No *a. County:	t for Publication Unres	t <b>ricted</b> o and P2c or P2d. Attach a location map as	s necessary.)		
*b. USGS 7.5' Quad:	Date:	T; R;	1/4 of1/4 of Sec;	В.М.	
c. Address: 212 -	214 E CHAPMAN	AVE	,# City: Orange Zip:	92866	
d. UTM: (Give more than one	for large and/or linear resources) Zone	mE/	mN		
e. Other Locational Data	a:				
*P3a. Description: (Describe re	source and its major elements. Include desig	n, materials, condition, alterations, size, se	tting, and boudnaries. Continues on Pg.3.)		
Materials: Masonry - (	Other than brick & stucco	or plaster			
Brick commercial with	n wood truss and basement				
*P3b. Resource Attributes: (List attributes and codes)	(HP6)Commercial buildir	1g			
*P4. Resources Present:	✓ Building Structure	Object 🗌 Site 🖌 Elemen	t of District 🔲 District 🗍 Other (I	solates, etc.)	
CS+: m.			P5b. Description of Photo:	2005	
			(View, date, accession #)		
			*DC Data Constructed/ Are and	Courses	
			*P6. Date Constructed/ Age and	Source:	
		A THE ASSA	1915 c	_	
• •		BO BY	Historic Prehistoric	Both	
		<b>a D</b>			
			*P7. Owner and Address:		
VARIAN AND A					
ur ATM Ha					
CalNationa			*P8: Recorded by: (Name, affiliation		
			D. Gest, P. LaValley, D		
			Matsumoto	•	
			Chattel Architecture		
			13417 Ventura Blvd.		
			Sherman Oaks, CA 91423		
		0	Sherman Oaks, CA 91423		
			*P9. Date Recorded:		
	survey report and other sources, or enter "n		May, 2005		
Orange County Assesso	or Records (2005). Chatte	l Architecture (2005)			
	urvey. AEGIS (1991) Histor nge County, Inc. (1982) Of		*P10. Survey Type: (Describe)		
- , , , , , ,			Reconnaissance		
*Attachments: NONE	Location Ma	p <b>C</b> ontinuation Sheet(	s) 🔽 Building, Structure, and Object	ct Record	
	eological Record District Reco	•			
	t Record Debugger				
DPR 523A (1/95)			*Required	d Information	

State of California - DEPARTMENT OF P BUILDING, STR	ARKS AND R	0,	Primary # HRI # *NRHP Status Code	30-162527 096932 1D
Page 2 of 3		*Resource Name or #: (Assigned by Recorder)	CHAPMAN_E_212-214	_APN_390-382-03
B1. Historic Name:	Unknown			
B2. Common Name:				
B3. Original Use:	СОМ	B4. Present Use:	СОМ	
*B5. Architectural Styl	e: Commerc	ial		
*B6. Construction Hist	ory: (Construction	n date, atlerations, and date of alterations)	Date of Construction:	1915 c 🖌 Historic 🗌 Prehistoric 🗌 Both
		y reversible alteration		05: Windows and Applied stucco.
*B8. Related Features: *B9. Architect or Build *B10. Significance:	er: Unknow		ity of Orange <b>Pro</b>	pertyType: Commercial
•		ne: Early Settlement (c.		
· · · · · · · · · · · · · · · · · · ·		nitectural context as defined by theme, per		Applicable Criteria: AC ddress integrity. Continues on Pg.4.)
Structural Integrity:	Good Cond	ition - Medium level of	alteration.	
Site Integrity:				
Opportunities: Alt	erations ar	re reversible.		

B11. Additional Resource Attributes: (List attributes and codes)

#### \*B12. References:

Orange Daily News.

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
Status change since	1991 Survey: None.	
*B14. Evaluator:	Robert Chattel	
*Date of Evaluation:	September, 2005	
(This space reserved for official comm	ents.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET				Primary # HRI # Trinomial	30-162527 096932 ORA	
Page 3 of 3	*F	Resource Name or (Assigned by Recorde		CHAPMAN_E_212-214	4APN_390-382-03	
Recorded by:						
D. Gest, P. LaValley, D. Matsumoto				Date Record	ded: May, 2005	
Chattel Architect						
13417 Ventura Blvd.				Continua	ation Update	
Sherman Oaks, CA	91423					
Years Surveyed: 1982, 1991, 2005				Description of Phot	oto: 1991	
Listed in National Register: 1982, 1997						
General Plan:	OTMIX-15S	# of Buildings:	1		104 - 1 <b>5</b> 4	
Planning Zone:	OTMU-15S	# of Stories:	1		t all a	
Lot Acre:		# of Units:	2			E.
Principal Building Sqft:	3124			3.8.		DES
B6. Construction History	r (Continued fro	om Pg.2):				SHADES

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

#### EXHIBIT "F"

# **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 828 S. Oakwood Street APN: 094-123-07 Mills Act Contract Number: 410.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Romel Singh Bhullar and Tahira Bhullar, Husband and Wife as Tenants in Common, as to an undivided 50 percent interest ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>828 S. Oakwood Street</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>094-123-07</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	Romel S. Bhullar and Tahira Bhullar
Attn.: City Clerk	828 S. Oakwood Street
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	-

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Romel Singh Bhullar

Dated: \_\_\_\_\_, 2021

Tahira Bhullar

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(Dear)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 121 of Tract No. 3545, in the City of Orange, County of Orange, State of California, as shown on Map recorded in Book 125, Pages 1 to 5 both inclusive of Miscellaneous Maps, Records of Orange County, California.

[APN 094-123-07]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Termite repair including tenting the house	\$15,000	2021
	and limited replacement of deteriorated		
	wood elements at eaves to match original		
	condition		
2.	Replace existing electrical panel and rewire	\$10,000	2021
	house as necessary		
3.	Remove and replace deteriorated concrete	\$10,000	2021
	driveway to match original condition		
4.	Repair and waterproof concrete masonry unit	\$5,000	2022
	planter at front corner of house		
5.	Paint exterior of house	\$10,000	2023
6.	Replace existing HVAC unit and furnace and	\$25,000	2023
	up		
7.	Replace damaged glass panes in one kitchen	\$14,000	2023
	and one living room window.		
8.	Repair roof to eliminate leaks around	\$30,000	2025
	fireplace and in garage and add insulation		
9.	Restore front door to original condition with	\$8,000	2030
	single wood slab door and mislite transom		
	and sidelights.		
TOTAL		\$127,000	

## 828 S. Oakwood Street

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

State of California - The F DEPARTMENT OF PARK	• •	Primary # HRI # Trinomial	ORA
PRIMARY RECORD		NRHP Status Code	3D
	Other Listings:		
	Review Code:	Reviewer:	Date:
Page 1 of 3	*Resource Name or (Assigned by Recorde		094-123-07
P1. Other Identifier: Fai:			
	t for Publication		
*a. County: *b. USGS 7.5' Quad:		b and P2c or P2d. Attach a location map as r <b>T R : R :</b>	.ecessary.) _ 1/4 of 1/4 of Sec;B.M
	S OAKWOOD		# <b>City:</b> <u>Orange</u> <b>Zip:</b> 92869
	for large and/or linear resources) Zone	' mE/ _	
e. Other Locational Data			
*P3a. Description: (Describe re	source and its major elements. Include desi	gn, materials, condition, alterations, size, setti	ng, and boudnaries. Continues on Pg.3.)
Materials:			
Model LA-91			
*P3b. Resource Attributes: (List attributes and codes) *P4. Resources Present:	(HP2)Single family pro		of District District Other (Isolates, etc.) P5b. Description of Photo: 2005 (View, date, accession #) *P6. Date Constructed/ Age and Source: <u>1960 c</u>
			Historic Prehistoric Both  *P7. Owner and Address:
			* <b>P8: Recorded by:</b> (Name, affiliation, and address) D. Gest, P. LaValley
and the second sec	· F	828	Chattel Architecture 13417 Ventura Blvd. Sherman Oaks, CA 91423
	e survey report and other sources, or enter "		* <b>P9. Date Recorded:</b> January 2005
Historic Resources St	or Records (2005). Chatte irvey.	H ATCHILECLUÉE (2003)	*P10. Survey Type: (Describe) Reconnaissance
	Location Ma eological Record District Rec t Record Photograph	ord Linear Feature Record	

State of California - The		Primary #	
DEPARTMENT OF PARK		HRI #	25
BUILDING, STRUCT	URE, AND OBJECT RECOP	RD "NRHP Status Code	<u>3D</u>
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	OAKWOOD_S_828_A	PN_094-123-07
B1. Historic Name: Unk	nown		
B2. Common Name:			
B3. Original Use:	RES <b>B4. Present Use:</b>	RES	
*B5. Architectural Style:	Mid-Century Modern		
*B6. Construction History:	(Construction date, atlerations, and date of alter	rations) Date of Construction:	1960 Historic Prehistoric Both
Replaced front door replaced.	and removed sidelights; gar	rage bays combined to c	reate single bay; garage doors
* <b>B7. Moved?</b> ✔ No 🗌 Y	es 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builder:	Eichler Homes - Anshen & A	Allen	
*B10. Significance: The	eme: Architecture Area:	City of Orange Pro	operty Type:
Period of Significance:	Eichler Tract (c. 1959 - 19	965)	Applicable Criteria:
	orical or architectural context as defined by then		
	cellent Condition - Medium	level of alteration as	of 2005.
Site Integrity:			
Opportunities			
B11 Additional Resource	Attributes: (List attributes and codes)		
*B12. References:	(List attributes and codes)		
Orange Daily News.			
B13. Remarks: (Continues on	Pa 3 )		(Sketch Map with North arrow required.)
	1991 Survey: Not previous]	ly surveyed.	
*B14. Evaluator:	Robert Chattel		
*Date of Evaluation:			+
(This space reserved for official comm	ents.)		
DPR 523B (1/95)			*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET		• •	Primary # HRI # Trinomial ORA
Page 3 of 3		*Resource Name or #: (Assigned by Recorder)	OAKWOOD_S_828_APN_094-123-07
Recorded by:			
D. Gest, P. LaVall	еу		Date Recorded: January 2005
Chattel Architectu	re		
13417 Ventura Blvd			Continuation Update
Sherman Oaks, CA	91423		
Years Surveyed:	2005,	2015	Description of Photo:
Listed in National Register	r:		
General Plan:	LDR	# of Buildings:	1
Planning Zone:	R-1-8	# of Stories:	1
Lot Acre:	0.1889	# of Units:	1
Principal Building Sqft:	2570	_	
B6. Construction History (	Continued	from Pg.2):	

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

RECORDING REQUESTED BY AND, WHEN RECORDED, MAIL TO:

City Clerk City of Orange 300 E. Chapman Avenue Orange, California, 92866

Exempt from recording fees pursuant to Gov. Code Sections 6103 and 27383

Property Address: 5111 E. Valencia Drive APN: 379-011-12 Mills Act Contract Number: 411.0-21

#### HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT ("Agreement") is made and entered into as of the date of execution by the City ("Effective Date"), by and between the CITY OF ORANGE, a municipal corporation ("City"), and Adrian Turner and Thuy Turner, as Trustees of The Adrian Turner and Thuy Turner Trust of 2014 ("Owner"), with reference to the following:

#### RECITALS

WHEREAS, the Mills Act (Government Code Section 50280 *et seq.*) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve and rehabilitate the property in return for a potential reduced property tax assessment; and

WHEREAS, the City of Orange has established Historic Districts consisting of the Plaza Historic District, listed in the National Register of Historic Places; the Old Towne Orange Historic District, listed in the National Register of Historic Places; the local Old Towne Orange Historic District, designated by the Orange City Council; and the local Eichler Fairhaven, Fairhills, and Fairmeadow Historic Districts, designated by the Orange City Council; and the City desires to promote the character, quality of life, and historic features of said Districts to its citizens and visitors; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act also has beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood historic resources; and

WHEREAS, the use of the Mills Act will fulfill one of the goals of the City's 2010 General Plan Cultural Resources Element; specifically,

"Provide incentives and expand education efforts for historic preservation" (Goal 3.0, CR-22); and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at <u>5111 E. Valencia Drive</u> in the City of Orange, County of Orange, State of California, having Assessor's Parcel Number <u>379-011-12</u> and more specifically described in <u>Exhibit A</u>, which exhibit is attached hereto and made a part hereof ("Historic Property); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is either: individually designated or is a contributing property within a designated district which is listed in the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or is a contributing property in a locally designated historic district; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historic significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

#### AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. APPLICABLE LAWS. This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the aforementioned provisions of the Government and Revenue and Taxation Codes, they are superseded by those Code Sections.

- 2. ASSESSMENT OF VALUATION. Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Office of the Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
- 3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roofline and other aspects of the appearance of the exterior of the Historic Property. For purposes of identification of the Historic Property, the City's Official Historic Property Inventory Form (DPR 523) is attached as Exhibit E.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary of the Interior's Standards for Rehabilitation, the California Historical Building Code, and the City of Orange's Historic Preservation Design Standards for Old Towne and Eichler Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in <u>Exhibit D</u> within the times established therefore in <u>Exhibit D</u>. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on <u>Exhibit D</u> and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.

In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. INSPECTIONS AND ANNUAL REPORTING. Owner agrees to permit the examination, by prior appointment, of the interior and exterior of the Historic Property by the City at a minimum every five (5) years during the Agreement term to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the

Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Historic Preservation Planner or in his/her absence the Director of Community Development that Owner has completed the work required by <u>Exhibit D</u> for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.

- 5. PAYMENT OF ANNUAL FEE. The Owner shall pay the City an annual fee to cover administrative costs associated with this Agreement including but not limited to the reasonable cost of monitoring the Historic Property, performing required inspections, and enforcement of the Agreement. Said fee shall be payable to the City of Orange and shall be remitted to the Planning Division upon demand and prior to any required inspection. The amount of the annual inspection fee shall be established by the City and may be revised from time to time, which fee shall be set forth in the City's Master Schedule of Fees and Charges. Failure to pay the required fee within 45 days of the due date will be considered a willful breach of this Agreement and may result in cancellation of the Agreement in accordance with the cancellation terms detailed below.
- 6. TERM. The term of this Agreement is for a period of ten (10) years. The initial term of this Agreement shall be from <u>November 9, 2021</u> to and including <u>November 9, 2031</u>.
- 7. AUTOMATIC RENEWAL. On each yearly anniversary of the Effective Date of this Agreement ("renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
- 8. EFFECT OF OUTSIDE FUNDS. If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
- 9. NOTICE OF NONRENEWAL. If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal to the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
- 10. EFFECT OF NOTICE NOT TO RENEW. If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.

11. UPDATE OF IMPROVEMENT SCHEDULE. At least ninety (90) days prior to the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10<sup>th</sup>) anniversary thereafter, Owner shall provide City with an updated schedule of rehabilitation maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.

From time to time, at the request of the City's Director of Community Development (or his/her authorized representative), the Owner shall meet and confer with the City's Planner for Historic Preservation or in his/her absence the Director of Community Development (or his/her designee) regarding matters arising hereunder with respect to the work and improvements and the progress in constructing the same.

- 12. INDEPENDENT ADVICE OF COUNSEL. The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
- 13. ENFORCEMENT OF AGREEMENT. If the City determines the owner has breached any of the conditions of the Agreement provided for or has allowed the property to deteriorate to the point it no longer meets the standards for a qualified historical property, the City shall either cancel the Agreement or bring any action in court necessary to enforce the Agreement including, but not limited to an action to enforce the Agreement by specific performance to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any

of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

- 14. CANCELLATION. In lieu of bringing an action to enforce the Agreement City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to rehabilitate the Historic Property in the manner specified in this Agreement.
- 15. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
- 16. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12-1/2%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- 17. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Orange	The Adrian Turner and Thuy Turner Trust of 2014
Attn.: City Clerk	3810 E. Fernwood Avenue
300 E. Chapman Avenue	Orange, CA 92869
Orange, CA 92866	

18. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.

- 19. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.
- 20. ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Historic Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be canceled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired.

If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstituted and the terms of this Agreement shall continue in full force and effect.

- 21. EFFECT OF AGREEMENT. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause the parties hereto to be considered joint venturers or members of any joint enterprise.
- 22. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner, regardless of the tax exempt status of any subsequent owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- 23. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY. In the event of any sale, transfer, assignment or conveyance of the Historic Property ("Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
- 24. RECORDATION. City shall record a copy of this Agreement with the Office of the County Recorder of the County of Orange.

- 25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community Development is authorized to amend the list of required projects in Exhibit D.
- 26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
- 27. ADMINISTRATION. This Agreement shall be administered by the City's Director of Community Development (or his/her designated representative) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community Development (or his/her authorized representative). The City's Director of Community Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement. Such amendments may include extensions of time or amendments to the projects specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.

#### [Remainder of page intentionally left blank; signatures on next page]

#### IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

"OWNER"

Dated: \_\_\_\_\_, 2021

Adrian Turner, Trustee

Dated: \_\_\_\_\_, 2021

Thuy Turner, Trustee

"CITY"

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2021

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

Mark A. Murphy Mayor

ATTEST:

APPROVED AS TO FORM:

Pamela Coleman City Clerk Mary E. Binning Senior Assistant City Attorney

#### ACKNOWLEDGEMENT

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

State of California County of \_\_\_\_\_

On \_\_\_\_\_\_ before me, \_\_\_\_\_\_, a Notary Public in and for the State of California, personally appeared \_\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature	(Seal)
Signature	(~~~~~)

#### EXHIBIT "A"

#### **LEGAL DESCRIPTION OF HISTORIC PROPERTY**

# **REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

Lot 12 of Tract No. 4733, in the City of Orange, County of Orange, State of California, as per map recorded in Book 177, Page(s) 7 to 10 of Miscellaneous Maps, in the office of the County Recorder of said County.

[APN 379-011-12]

#### EXHIBIT "B"

#### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

- 1. Every reasonable effort shall be made to provide a compatible use for a property, which requires a minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- 2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
- 6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- 7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- 8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- 9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- 10. Wherever possible, new additions or alterations to structures shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

#### EXHIBIT "C"

## <u>CITY OF ORANGE HISTORIC PROPERTY</u> <u>MAINTENANCE STANDARDS</u>

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

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

# EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

[Attached.]

## EXHIBIT "D"

# **REHABILITATION/MAINTENANCE SCOPE OF WORK**

Priority	Description of Work	Cost Estimate	<b>Completion Date</b>
1.	Repair radiant heating system	\$2,500	2021
2.	Exterior termite tent fumigation	\$6,500	2027
3.	Wood repairs to siding and eaves from termite damage	\$2,500	2027
4.	Replace / add window tint film on exterior windows	\$4,000	2027
5.	Repaint exterior of house	\$9,000	2028
6.	Replace water heater	\$3,500	2028
7.	Repair and/or replace deteriorated siding and trim due to sun and weather damage	\$7,500	2029
TOTAL		\$35,500	

## 5111 E. Valencia Drive

# EXHIBIT "E"

# HISTORIC PROPERTY INVENTORY FORM (DPR 523)

[Attached.]

DEPARTMENT OF PARKS AND RECREATION       HRI #         PRIMARY RECORD       Trinomial         NRHP Status Code       30         Other Listings:       Review Code:       Reviewer:         Page 1 of 3       "Record Name or #:       VALENCEA # 5111ACH_373-011-12         P1. Other Identifier:       Fairbillis Tract       "Unrestricted         *a. County:       Orange       and rps.wr/partparts/stated       T; R_; 1/4 of 1/4 of Sec_; B.M.         *a. County:       Orange       and rps.wr/partparts/stated       mst       County:         *a. County:       Orange       and rps.wr/partparts/stated       mst       County:       p. 92899         d. UTM::       Unrestricted       *       mst       mst       mst       g. 92899         d. UTM::       Unrestricted       *       mst       mst       mst       g. 92899         d. UTM::       Unrestricted       *       mst       mst       mst       g. 92899         d. UTM::       Unrestricted       *       mst       mst       g. 92899       g. 92899         d. UTM::       Unrestricted       *       mst       TS. Description of Prote:       201         ************************************		ornia - The Resources Ager	-	Primary #		
PRIMART REDURD       NRHP Status Code       30         Other Listings:       Review Crite       30         Review Code:       Reviewer:       Date:         Page 1 of 3       Resource Name or #:       VMTRNCTA_R_S111APR_379-011-12         Warned Sy Rescaler;       VMTRNCTA_R_S111APR_379-011-12         P1, Other Identifier:       Crange       and         "P2. Location:       Ox for Publication       M Unrestricted         "a. County:       Crange       and       T2 and P2 or F3. Alash a social map a modesmy)         "h. USGS 75/Guad:       Example:       T ; R ; 1/4 of       1/4 of Sec ; B.M.         c. Address:       Dite:       T ; R ; 1/4 of       I/4 of Sec ; B.M.         c. Address:       Dite:       T ; R ; 1/4 of       I/4 of Sec ; B.M.         c. Address:       Dite:       T ; R ; 1/4 of       I/4 of Sec ; B.M.         c. Address:       Dite:       T ; R ; 1/4 of       I/4 of Sec ; B.M.         c. Address:       Dite:       T ; R ; 1/4 of       I/4 of Sec ; 2/1 ; 2/260         d. UTM: (Downing and the major elements. Induce design, mastrist. constitut, site, setting, and buckaries. Continues on Pg.3)       Materials:         "P3b. Resource Attributes:       (1192)Singlise Tamiliy properity       Dite:       Dite:         (Lis			TION		ORA	_
Review Code:       Reviewer:       Date:         Page 1 of 3       'Resource Name or ff: (Antipate's Recoold)       VALENCIA_E_S111_APE_3/3-011-12         P1. Other Identifie:       Earth115 Tract         P2. Location:       Ontor Publication       If westrided         *10. Contry:       Orongo       end       P2. Attach a location may as necessary.)         *1. USS 7.5 Guad:       E       VALENCIA       Date:       T       ; R       ; If A'd       14 of Sec       ; E.M.         c. Address:       J. USS 7.5 Guad:       E       VALENCIA       Date:       T       ; R       if I A'd       14 of Sec       ; E.M.         c. Address:       J. USS 7.5 Guad:       E       VALENCIA       Date:       T       ; R       if I A'd       14 of Sec       ; E.M.         d. UTM:       (Control to one to logg and/or logg	PRIMARY	RECORD				
Page 1 of 3       'Resource Name of fi:       VALENCTA_E_5111_APR_3/3-011-12         P1. Other Identifier:       Faith1113 Tract         'P2. Location:       [] Not for Publication       [] Unreshinded         'a. County:       Orange       and [P2 b of Pace P24. Atach a location maps encousery)         'b. USSS 7.5 Quad:			-			
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*P11. Report Citation:       (Cite survey report and other sources, or enter "none.")       300 E. Chapman Ave.         Orange County Assessor Records (2005).       Chattel Architecture (2005)       *P9. Date Recorded:         June 2015       *P10. Survey Type:       (Describe)         Reconnaissance       *Attachments:       NONE       Location Map       Continuation Sheet(s)         *Attachments:       NONE       District Record       Linear Feature Record       Milling Station Record Rock Art Record					Marissa Moshier, Historic	ldress)
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Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record			2005). Chattel Ar	chitecture (2005)		
	*Attachments:		District Record	Linear Feature Recor		

\*Required Information

DEPARTMENT OF PA	he Resources Agency RKS AND RECREATION CTURE, AND OBJECT RECORI	Primary # HRI # D *NRHP Status Code	3D
Page 2 of 3	*Resource Name or #: (Assigned by Recorder)	VALENCIA_E_5111	APN_379-011-12
-	Jnknown		
B2. Common Name:			
B3. Original Use:	RES B4. Present Use:	RES	
*B5. Architectural Style:	Mid-Century Modern		
* <b>B6. Construction Histo</b> Front door replace	ry: (Construction date, atlerations, and date of alterati	ions) Date of Construction:	<u>1962</u> Historic Prehistoric Both
*B7. Moved? 🖌 No 🗌	Yes 🗌 Unknown Date:	Original Location:	
*B8. Related Features:			
*B9. Architect or Builde	: Eichler Homes - A. Quincy J	ones	
*B10. Significance:	Theme: <u>Architecture</u> Area:	City of Orange Pro	pperty Type:
(Discuss importance in terms of	: Eichler Tract (c. 1959 - 196) historical or architectural context as defined by theme,	, period, and geographic scope. Also a	
Structural Integrity:	Good Condition - Low level of	alteration as of 2015	
Site Integrity:			
Opportunities			
B11. Additional Resource	e Attributes: (List attributes and codes)		

#### \*B12. References:

Orange Daily News. Eichler Tract Brochures and miscellaneous Eichler materials from the Orange Public Library.

B13. Remarks: (Continues on	Pg.3.)	(Sketch Map with North arrow required.)
Status change since	1991 Survey: Not previously surveyed.	
*B14. Evaluator:	Marissa Moshier, City of Orange	
*Date of Evaluation:	June 2015	
(This space reserved for official comm	ients.)	
DPR 523B (1/95)		*Required Information

State of California - The Resources Agency DEPARTMENT OF PARKS AND RECREATION CONTINUATION SHEET		Primary # HRI # Trinomial	ORA		
Page 3 of 3		*Resource Name of (Assigned by Record		VALENCIA_E_5111AP	'N_379-011-12
Recorded by:					
Marissa Moshier, I	Historic Pr	reservation Pla	nner	Date Recorded	: June 2015
City of Orange 300 E. Chapman Ave Orange, CA 92866	e.			<ul> <li>Continuatio</li> </ul>	n 🗌 Update
Years Surveyed:	2005,	2015		Description of Photo:	2010
Listed in National Registe	er:				
General Plan:	LDR	# of Buildings:	1		
Planning Zone:	R-1-8	# of Stories:	1		
Lot Acre:	0.1958	# of Units:	1		
Principal Building Sqft:	2421				Alle Alle
B6. Construction History	(Continued fr	 rom Pg.2):			

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

\*Required Information

## EXHIBIT "F"

## **CERTIFICATION OF TRUST**

[Attached.]

To be provided by applicant during signature process



# Agenda Item

City Council

Item #: 3.9	9. 11/9/2021	File #: 21-0606
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Will Kolbow, Assistant City Manager/Administrative Servi	ces Director

## 1. SUBJECT

First Amendment to Agreement with Siemens Industry, Inc. for implementation of additional security access control and video camera management for the new Fire Station No. 1 and Headquarters.

## 2. SUMMARY

The First Amendment authorizes the purchase and installation for adding access control to three pedestrian gates, one door in the apparatus bay, two doors in the apparatus building, and one security camera to the apparatus building.

## 3. **RECOMMENDED ACTION**

- 1. Approve amendment with Siemens Industry, Inc. in an amount of \$29,172.18 for additional implementation of security access control and video camera management; and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the appropriation of \$29,172.18 from the Capital Bond Proceeds unreserved fund balance to expenditure account number 553.5011.56020.20400, CIP Building And Improvements -Fire Station No. 1.

## 4. FISCAL IMPACT

The total expenditure for this amendment is \$29,172.18, for a total agreement cost of \$214,376.58, and will be funded in Fire Station No. 1 (20400) through Capital Bond Proceeds (553).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 2: Be a fiscally healthy community

d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

In July 2021, City Council approved an agreement with Siemens Industry, Inc. for implementation of security access control and video camera management for the new Fire Station No. 1 and Headquarters, with a total agreement cost of \$214,376.58. Siemens is the City's incumbent single source provider for the Genetec Security Platform. The agreement approved in July included 23

#### 11/9/2021

cameras, 21 card readers/keypads for doors, and two gate controllers.

During the construction walk-through and review process, three additional pedestrian gates, one door in the apparatus bay, two doors in the apparatus building, and one camera for the apparatus building were identified as important additions for the security of the new Fire Station No. 1 and Headquarters. These additions support the goals for a standardized and complete security access control solution. Note that a portion of the included \$29,172.18 costs are necessary additional infrastructure materials such as controllers and switches to support the added doors and camera.

Staff recommends approval of the First Amendment to the agreement with Siemens in the amount of \$29,172.18 to complete the access control and video management solution for the new Fire Station No. 1 and Headquarters.

## 7. ATTACHMENTS

• First Amendment to Agreement with Siemens Industry, Inc.



# Agenda Item

City Council

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FROM:	Will Kolbow, Assistant City Manager/Administrative Servi	ces Director

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### FIRST AMENDMENT

#### TO

#### **PROFESSIONAL SERVICES AGREEMENT**

#### [Video Management and Surveillance Software and Maintenance Services]

**THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT** (the "First Amendment") is made and entered into as of \_\_\_\_\_\_, 2021, by and between the CITY OF ORANGE, a municipal corporation ("City"), and SIEMENS INDUSTRY, INC., a California corporation ("Contractor"), with reference to the following:

A. City and Contractor entered into a Professional Services Agreement (Agreement No. 7215) dated July 13, 2021, which is incorporated herein by this reference (the "Original Agreement"); and

B. City and Contractor desire to amend the Original Agreement to modify, amend and supplement certain portions of the Original Agreement by revising the Scope of Work and increasing the compensation.

NOW, THEREFORE, the parties hereby agree as follows:

Section 1. Defined Terms. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Agreement.

<u>Section 2.</u> <u>Cross-References.</u> City and Contractor agree that all references in this First Amendment are deemed and construed to refer to the Original Agreement, as implemented by this First Amendment.

<u>Section 3</u> <u>Revised Scope of Services</u>. The Scope of Services, Section 1, <u>Exhibit A</u> of the Original Agreement, is hereby amended, modified and supplemented to include the services described on <u>Exhibit A</u> attached hereto and incorporated herein by this reference.

<u>Section 4</u> <u>Compensation</u>. The total not-to-exceed compensation for the services to be rendered as set forth in Section 2 of the Original Agreement is increased by TWENTY-NINE THOUSAND ONE HUNDRED SEVENTY-TWO DOLLARS and 18/100 (\$29,172.18) and Section 2.a and 2.d are hereby amended in their entirety to read as follows:

"a. Contractor's total compensation for all services performed under this Agreement, shall not exceed ONE HUNDRED NINETY-SEVEN THOUSAND FIVE HUNDRED THIRTY-NINE DOLLARS and 82/100 (\$197,539.82) without the prior written authorization of City."

"d. The total amount of compensation under this Agreement, including contingencies, shall not exceed TWO HUNDRED FOURTEEN THOUSAND THREE HUNDRED SEVENTY-SIX DOLLARS and 58/100 (\$214,376.58)."

<u>Section 5.</u> <u>Authority of City Manager</u>. Pursuant to Section 3.08.430 of the Orange Municipal Code, the City Manager is authorized to approve and execute amendments to the Agreement to adjust the compensation as provided herein.

<u>Section 6.</u> <u>Integration</u>. This First Amendment amends, as set forth herein, the Original Agreement and, except as specifically amended hereby, the Original Agreement shall remain in full force and effect. To the extent that there is any conflict or inconsistency between the terms and provisions of this First Amendment and the terms and provisions of the Original Agreement, the terms and provisions of this First Amendment shall control and govern the rights and obligations of the parties.

**IN WITNESS** of this First Amendment, the parties enter into this First Amendment on the year and day first above written.

#### "CONTRACTOR"

SIEMENS INDUSTRY, INC., a California corporation

Title:

*By:	
Printed Name:	
Title:	

\*By: \_\_\_\_\_ Printed Name: \_\_\_\_\_

By: \_\_\_\_\_\_ Mark A. Murphy, Mayor

"CITY"

CITY OF ORANGE, a municipal corporation

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning Senior Assistant City Attorney

\*<u>NOTE</u>: If Contractor is a corporation, the City requires the following signature(s):

- (1) the Chairman of the Board, the President or a Vice-President, <u>AND</u> (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. <u>OR</u>
- -- The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to the City.

## EXHIBIT "A"

# SUPPLEMENTAL SCOPE OF SERVICES

[Behind this page.]



Siemens Building Technologies 6141 Katella Ave, Cypress, CA 90630 DATE: Sept 17, 2021

Change Order 1 Rev A, Proposal #5965634 City of Orange Fire Station

Site Address: 300 E Chapman, Orange CA 92866

#### **PROPOSAL PRICING**

#### Includes labor, material and tax

Change Order #1 Rev A, Adds 3 card readers, door interface boards, REX and DC's as called for in AEI-09. No new cameras are included in this scope.

Installation labor to install, terminate, commission and test.

Materials	\$	4760.00
Installation, PM, Specialist	3675.00	
<u>Tax :</u>	\$	357.00
TOTAL :	Authorized Amount: <u>\$</u>	8792.00

#### **Remarks:**

The Terms and Conditions of Sale shown on the attached are a part hereof. Per project aggregate general liability insurance is excluded. Prices quoted are firm for 30 days.

Proposed By Siemens Industry Inc

Siemens muusu y me.
Company
John Marlow
Name
Project Manager, Security
Title
Sept 17, 2021
Date
30 Days

**Quote Valid For 30 Days** 

#### Accepted By

Company

Name

Title

Signature

Date

Purchase Order #



### **CHANGE ORDER #1 Rev A, SUMMARY**

This change order is for scope of work items not included in initial Siemens proposal #5965634

Change Order for the following scope of work based upon ASI 09 for Site Gate Security Access dated 7-13-2021 . Original SOW Drawings: E1.1-2, E1.1-3, E1.2-3, SEC SK-1

#### Additional Access Control devices to install:

## **CO Total – 3 New Pedestrian Access Card Readers CO Equipment Installation:**

Siemens will install the following additional devices based upon the new drawings

- 3 Additional Card Readers
- 3 Additional Door Contacts
- 3 Additional Motion Sensors
- 3 Additional Request to Exit

NOTE – Electrified locking hardware and gate modifications to accept same are by others. Conduit path to new gates are by others, cable pulls are by others.

#### CHANGE ORDER IMPACT ON PROJECT SCHEDULE:

At the moment of writing this change order, Siemens has concluded that there are no cost or schedule impacts to completion. With growing supply chain disruptions, if change order is not approved by Oct 22<sup>th</sup>, 2021 there could be delays which will potentially impact the project schedule.

#### **EXCLUSIONS / CLARIFICATIONS**

- Scope excludes all permits and inspection fees
- Shop Drawings and As-builts will be updated if approved
- All conduit work to be provided and installed by electrical contractor
- Excludes patch and paint
- Dedicated 110v power shall be provided by others and is excluded from Siemens scope of work
- Siemens assumes all locking hardware will be provided and installed by others
- Siemens terms and conditions below applies

# TERMS AND CONDITIONS

#### DISCLAIMER

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions, the Contract Terms and Conditions, the Contract Terms and Conditions shall control.



BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from below date. Payment is due from 30 days of invoice date. Cost summary provided for accounting purposes only. Additions and deletions will require a revised quote.

CLICK HERE FOR FULL TERMS AND CONDITIONS



Siemens Building Technologies 6141 Katella Ave, Cypress, CA 90630 DATE: Oct 7, 2021

Change Order #2, For ASI-04/RFI-54, Proposal # 1a129c4db5 City of Orange Fire Station

Site Address: 300 E Chapman, Orange CA 92866

#### **PROPOSAL PRICING**

Includes labor, material and tax

Change Order #2 adds 1 card reader, door interface board, REX, DC. Installation labor to install, terminate, commission and test.

### Total Amount: \$3,397.46

#### **Remarks:**

The Terms and Conditions of Sale shown on the attached are a part hereof. Per project aggregate general liability insurance is excluded. Prices quoted are firm for 30 days.

Proposed By	Accepted By
Siemens Industry Inc.	
Company	Company
John Marlow	
Name	Name
Project Manager, Security	
Title	Title
Oct 7 <sup>th</sup> 2021	
Date	Signature
30 Days	
Quote Valid For 30 Days	Date

Purchase Order #



#### **CHANGE ORDER #2 SUMMARY**

This change order is for scope of work items not included in initial Siemens proposal #5965634

Change Order for the following scope of work based upon meeting the City of Orange standard that all IDF and Server Rms have access control.

### Additional Access Control devices to install:

## CO Total – 1 New Admin, Access Card Reader, door 138A CO Equipment Installation:

Siemens will install the following additional devices based upon the new drawings

- 1 Additional Card Readers
- 1 Additional Door Interface Board
- 1 Additional Door Contact
- 1 Additional Exit Motion Sensor

NOTE – Electrified locking hardware and door modifications (if any) to accept same are by others. Conduit path to new devices above are by others, cable pulls are by others.

### CHANGE ORDER IMPACT ON PROJECT SCHEDULE:

At the moment of writing this change order, Siemens has concluded that there are no cost or schedule impacts to completion. With growing supply chain disruptions, if change order is not approved by Oct 22<sup>th</sup>, 2021 there could be delays which will potentially impact the project schedule.

#### **EXCLUSIONS / CLARIFICATIONS**

- Scope excludes all permits and inspection fees
- Shop Drawings and As-builts will be updated if approved
- All conduit work to be provided and installed by electrical contractor
- Excludes patch and paint
- Dedicated 110v power shall be provided by others and is excluded from Siemens scope of work
- Siemens assumes all locking hardware will be provided and installed by others
- Siemens terms and conditions below applies

# **TERMS AND CONDITIONS**



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This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from below date. Payment is due from 30 days of invoice date. Cost summary provided for accounting purposes only. Additions and deletions will require a revised quote.

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Siemens Building Technologies 6141 Katella Ave, Cypress, CA 90630 DATE: Oct 7, 2021

Change Order 4, Proposal # 40cb319b City of Orange Fire Station

Site Address: 300 E Chapman, Orange CA 92866

#### **PROPOSAL PRICING**

Includes labor, material and tax

Change Order #4 adds 2 card readers, new enclosure and power supply, door interface controller board, REX, DC's, 1 Axis 180' camera and recording license, Cisco 8 port remote switch as called for in ASI-16. Installation labor to install, terminate, commission and test.

## Total Amount: \$16982.72

#### Remarks:

The Terms and Conditions of Sale shown on the attached are a part hereof. Per project aggregate general liability insurance is excluded. Prices quoted are firm for 30 days.

Proposed By	Accepted By
Siemens Industry Inc.	
Company	Company
John Marlow	
Name	Name
Project Manager, Security	
Title	Title
Oct 7 <sup>th</sup> 2021	
Date	Signature
30 Days	
Quote Valid For 30 Days	Date
	Purchase Order #



#### **CHANGE ORDER #4 SUMMARY**

This change order is for scope of work items not included in initial Siemens proposal #5965634

Change Order for the following scope of work based upon ASI 16 for Site Apparatus dated 9-8-2021.

#### Additional Access Control devices to install:

# CO Total – 2 New apparatus Access Card Readers doors 301 and 302, new camera as shown on SEC-SK-16.1 dated 9-8-2021

#### **CO Equipment Installation:**

Siemens will install the following additional devices based upon the new drawings

- 2 Additional Card Readers
- 2 Additional Door Contacts
- 2 Additional Request to Exit
- 1 Additional Power Supply and Enclosure
- 1 Additional Door Controller Board
- 1 Additional Axis P3807-PVE 180' dome and wall mount
- 1 Additional Multi-port Network Module and power supply

NOTE – Electrified locking hardware and door modifications (if any) to accept same are by others. Conduit path to new devices above are by others, cable pulls are by others.

### CHANGE ORDER IMPACT ON PROJECT SCHEDULE:

At the moment of writing this change order, Siemens has concluded that there are no cost or schedule impacts to completion. With growing supply chain disruptions, if change order is not approved by Oct 22<sup>th</sup>, 2021 there could be delays which will potentially impact the project schedule.

### **EXCLUSIONS / CLARIFICATIONS**

- Scope excludes all permits and inspection fees
- Shop Drawings and As-builts will be updated if approved
- All conduit work to be provided and installed by electrical contractor
- Excludes patch and paint
- Dedicated 110v power shall be provided by others and is excluded from Siemens scope of work
- Siemens assumes all locking hardware will be provided and installed by others
- Siemens terms and conditions below applies

# **TERMS AND CONDITIONS**



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This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from below date. Payment is due from 30 days of invoice date. Cost summary provided for accounting purposes only. Additions and deletions will require a revised quote.

**CLICK HERE FOR FULL TERMS AND CONDITIONS** 



# Agenda Item

City Council

ltem #: 3.1	. 11/9/2021	File #: 21-0580
TO:	Honorable Mayor and Members of the City Council	

FROM: Thomas R. Hatch, Interim City Manager

## 1. SUBJECT

First Amendment to Permit Agreement with Los Angeles SMSA Limited Partnership, dba Verizon Wireless.

## 2. SUMMARY

This First Amendment would extend the term of the original agreement by twenty years for a wireless facility mounted on a street light pole on Jamboree Road near the city boundary with Tustin.

## 3. RECOMMENDED ACTION

Approve First Amendment with Los Angeles SMSA Limited Partnership, dba Verizon Wireless; and authorize the Mayor and City Clerk to execute on behalf of the City.

## 4. FISCAL IMPACT

None.

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

In 2003, the City entered into an agreement with Los Angeles SMSA Limited Partnership, dba Verizon Wireless (Verizon) to install a small cell facility on a City-owned street light pole on Jamboree Road near the city border with Tustin. This agreement expires on October 1, 2023, and the proposed amendment would extend the term of the agreement for an additional twenty years. In exchange for extending the term of the agreement, Verizon has agreed to increase the annual attachment fee by 25% to \$3,992.76 and increase the fee amount by 4% each year during the term extension. Staff believes that the proposed terms will bring the lease in line with market rates for similar installation types.

Staff recommends approving the proposed amendment to allow Verizon to continue providing robust wireless coverage in the City of Orange while also providing lease revenue to support City infrastructure and services.

## 7. ATTACHMENT

• First Amendment to Permit to Attach, Install, Operate, and Maintain a Wireless

11/9/2021

**Communications Network** 



# Agenda Item

City Council

ltem #: 3.1	. 11/9/2021	File #: 21-0580
TO:	Honorable Mayor and Members of the City Council	

FROM: Thomas R. Hatch, Interim City Manager

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## 2. SUMMARY

This First Amendment would extend the term of the original agreement by twenty years for a wireless facility mounted on a street light pole on Jamboree Road near the city boundary with Tustin.

## 3. **RECOMMENDED ACTION**

Approve First Amendment with Los Angeles SMSA Limited Partnership, dba Verizon Wireless; and authorize the Mayor and City Clerk to execute on behalf of the City.

## 4. FISCAL IMPACT

None.

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

In 2003, the City entered into an agreement with Los Angeles SMSA Limited Partnership, dba Verizon Wireless (Verizon) to install a small cell facility on a City-owned street light pole on Jamboree Road near the city border with Tustin. This agreement expires on October 1, 2023, and the proposed amendment would extend the term of the agreement for an additional twenty years. In exchange for extending the term of the agreement, Verizon has agreed to increase the annual attachment fee by 25% to \$3,992.76 and increase the fee amount by 4% each year during the term extension. Staff believes that the proposed terms will bring the lease in line with market rates for similar installation types.

Staff recommends approving the proposed amendment to allow Verizon to continue providing robust wireless coverage in the City of Orange while also providing lease revenue to support City infrastructure and services.

## 7. ATTACHMENT

• First Amendment to Permit to Attach, Install, Operate, and Maintain a Wireless

11/9/2021

**Communications Network** 

#### FIRST AMENDMENT TO PERMIT TO ATTACH, INSTALL, OPERATE AND MAINTAIN A WIRELESS COMMUNICATIONS NETWORK

This First Amendment to Permit to Attach, Install, Operate and Maintain a Wireless Communications Network (the "Amendment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Orange ("City") and Los Angeles SMSA Limited Partnership, dba Verizon Wireless ("VZW"), with reference to the facts set forth in the Recitals below:

#### RECITALS

A. The City has the right and power to regulate the time, location, and manner of attachment, installation, operation and maintenance of wireless communications in the public-right-of-way within the limits of the City;

B. The City and VZW are parties to that certain Permit to Attach, Install, Operate and Maintain a Wireless Communications Network dated October 27, 2003 (the "Permit"). Pursuant to the Permit, VZW has a right to attach, install, operate and maintain a wireless communications network on facilities located in the public-right-of-way for purposes of operating its wireless communications network. The Permit expires pursuant to its terms on October 16, 2023.

C. The City and VZW have agreed to amend the Permit to extend the term of the Permit, as provided herein.

#### AGREEMENT

NOW, THEREFORE, in consideration of the facts contained in the Recitals above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Extension Terms.** Commencing on October 1, 2023, the City and VZW hereby agree that the term of the Permit shall be extended for a term of five (5) years and shall automatically be extended for three (3) additional extension terms of five (5) years each, unless VZW terminates the Permit by giving the City written notice of the intent to terminate at least sixty (60) days prior to the end of the then-current term.

2. **Fee Increase**. Effective as of October 1, 2023, the Annual Fee due under the Permit shall be Three Thousand Nine Hundred Ninety-Two and 76/100 Dollars (\$3,992.76) ("Annual Fee Increase"), payable monthly, in advance, for the use of each City-owned pole upon which Antenna(s) have been installed pursuant to the Permit. Effective as of October 1, 2024, and on each anniversary thereof during the term of the Permit, as extended hereby, the Annual Fee shall increase by an amount equal to four percent (4%) of the Annual Fee of the immediately preceding twelve month period.

3. **Continued Effect.** Except as specifically modified by this Amendment, all of the terms and conditions of the Permit shall remain in full force and effect. In the event of a conflict between any term or provision of the Permit and this Amendment, the terms and provisions of this Amendment shall control. In addition, except as otherwise stated in this Amendment, all initially capitalized terms will have the same respective defined meaning stated

in the Permit. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the City and VZW have caused this Amendment to be executed by each party's duly authorized representative effective as of the date first above written.

City:

The City of Orange

By:	
Name	
Title:	
Date:	

Approval as to form:

By:	
Name:	
Title:	
Date:	
Date:	 

#### Attest:

By:	
Name:	
Title:	
Date:	

#### VZW:

Los Angeles SMSA Limited Partnership, dba Verizon Wireless

By: AirTouch Cellular Inc.
Its: General Partner
By:
Name: Steve Lamb
Title: Dir. Net. Field Engineenma
Date: $9/23/19$



# Agenda Item

City Council

ltem #: 3.11. 11/9/2021		File #: 21-0581	
то:	Honorable Mayor and Memb	ers of the City Counci	I
THRU:	Thomas R. Hatch, Interim Ci	ty Manager	
FROM:	Christopher Cash, Public W	orks Director	

## 1. SUBJECT

Addendum 3D to the existing Water Conservation Participation Agreement with the Municipal Water District of Orange County (MWDOC) for implementation of the Dedicated Irrigation Meters Measurement Program.

## 2. SUMMARY

The Municipal Water District of Orange County (MWDOC) has introduced Addendum 3D: Dedicated Irrigation Meters Measurement Program to the 2015 Water Conservation Participation Agreement. The Addendum provides assistance to participating agencies to comply with Assembly Bill 1668 and Senate Bill 606 (Conservation Framework) requirements for urban water suppliers. The program will help to identify and measure landscaped areas associated with dedicated irrigation meters to calculate their Urban Water Use Objective. A MWDOC-led, regional approach has increased cost effectiveness for agencies through economies of scale and minimizing administrative burdens.

## 3. RECOMMENDED ACTION

- 1. Approve Addendum 3D to the existing Water Conservation Participation Agreement with Municipal Water District of Orange County (MWDOC) for implementation of the Dedicated Irrigation Meters Measurement Program and authorize the Public Works Director to execute on behalf of the City.
- 2. Authorize the appropriation of \$95,444.88 from the Water Fund unreserved fund balance to expenditure account number 600.8011.53441.00000, Water Fund Water Conservation Items.

## 4. FISCAL IMPACT

The total expenditure for this project will be funded in the Water Conservation Items through Water Fund (600).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

Assembly Bill (AB) 1668 and Senate Bill (SB) 606, also known as The Conservation Framework, signed by the Governor in 2018, requires each Urban Water Supplier to calculate and report their Urban Water Use Objective by January 1, 2024, and to stay within their calculated annual water budget.

The Urban Water Use Objective is an estimate of the aggregate efficient water use based on indoor residential use, outdoor use with dedicated irrigation meters, distribution system water losses, approved variances, and a potable reuse bonus.

To achieve this goal by the program deadline, and to accomplish it in a cost effective way, Municipal Water District of Orange County (MWDOC) has entered into an agreement with Quantum Spatial, Inc. (Quantum) to assist participant agencies to provide landscape measurements associated with dedicated irrigation meters. Quantum will utilize a combination of the three applicable measurement methods: field mapping, remotely sensed mapping, and a statistical mapping approach.

In addition, MWDOC secured funding from Metropolitan Water District (MET) and Santa Ana Watershed Project Authority (SAWPA) to help with lowering the cost per customer. To join this regional program, participating agencies are asked to sign Addendum 3D to the existing 10-year Water Conservation Participation Agreement (which was first established in 2015 and included several other critical water conservation programs).

Based on the number of the City's existing services, Tal	ble 1 below summarizes the number of
customers and meters that are required to be measured to r	meet the regulation.

		MWDOC	Cost Share	Participant Agency Cost Share		
Methodology	Cost per Customer*	MET Funding	SAWPA Funding PER METER**	Quantity of Agency Customers	Quantity of Agency Meters	Not to Exceed Funding Limit For Fiscal Year 2021-2022
Remote Measurement	\$258.33	\$85.00	\$10.50	286	425	\$45,109.88
Field Measurement	\$465.52	\$85.00	\$10.50	72	97	\$26,378.94
Statistical Measurement	<mark>\$1</mark> 31.49	\$65.75	\$10.50	<mark>1</mark> 9	28	\$955.06
				377	550	\$72,443.88

Besides the measurement cost listed above, participating agencies have an option to purchase the Waterview CII Database Viewer Platform, which will provide the water efficiency budget calculations for customers included in this program as recommended by the Department of Water Resources and State Water Resource Control Board. The purchase cost for the Platform is summarized in the following Table 2.

Item #: 3.11.

Category Cost		Participant Agency Enrolling in Optional Platform (x)	Number of Customers	Not to Exceed Funding Limit For Fiscal Year 2021- 2022	
Flat Fee Per Retail Water Agency	<mark>\$10,</mark> 560	Yes		\$ 23,001.00	
Cost per customer (per water agency)	\$33/customer		377	Flat Fee + (\$33x No. of Customers)	

The total cost for the City to participate in Addendum 3D to the existing Water Conservation Participation Agreement is \$95,444.88.

## 7. ATTACHMENTS

• Addendum 3D to Water Conservation Participation Agreement



# Agenda Item

City Council

ltem #: 3.11. 11/9/2021		File #: 21-0581	
то:	Honorable Mayor and Memb	ers of the City Counci	I
THRU:	Thomas R. Hatch, Interim Ci	ty Manager	
FROM:	Christopher Cash, Public W	orks Director	

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Addendum 3D to the existing Water Conservation Participation Agreement with the Municipal Water District of Orange County (MWDOC) for implementation of the Dedicated Irrigation Meters Measurement Program.

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The total expenditure for this project will be funded in the Water Conservation Items through Water Fund (600).

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b: Provide facilities and services to meet customer expectations.

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The Urban Water Use Objective is an estimate of the aggregate efficient water use based on indoor residential use, outdoor use with dedicated irrigation meters, distribution system water losses, approved variances, and a potable reuse bonus.

To achieve this goal by the program deadline, and to accomplish it in a cost effective way, Municipal Water District of Orange County (MWDOC) has entered into an agreement with Quantum Spatial, Inc. (Quantum) to assist participant agencies to provide landscape measurements associated with dedicated irrigation meters. Quantum will utilize a combination of the three applicable measurement methods: field mapping, remotely sensed mapping, and a statistical mapping approach.

In addition, MWDOC secured funding from Metropolitan Water District (MET) and Santa Ana Watershed Project Authority (SAWPA) to help with lowering the cost per customer. To join this regional program, participating agencies are asked to sign Addendum 3D to the existing 10-year Water Conservation Participation Agreement (which was first established in 2015 and included several other critical water conservation programs).

Based on the number of the City's existing services, Table 1 below summarizes the number	of
customers and meters that are required to be measured to meet the regulation.	

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Field Measurement	\$465.52	\$85.00	<b>\$10.50</b>	72	97	\$26,378.94
Statistical Measurement	<mark>\$131.49</mark>	\$65.75	\$10.50	19	28	\$955.06
				377	550	\$72,443.88

Besides the measurement cost listed above, participating agencies have an option to purchase the Waterview CII Database Viewer Platform, which will provide the water efficiency budget calculations for customers included in this program as recommended by the Department of Water Resources and State Water Resource Control Board. The purchase cost for the Platform is summarized in the following Table 2.

Item #: 3.11.

Category	Cost	Participant Agency Enrolling in Optional Platform (x)	Number of Customers	Not to Exceed Funding Limit For Fiscal Year 2021- 2022
Flat Fee Per Retail Water Agency	<mark>\$10,</mark> 560	Yes		\$ 23,001.00
Cost per customer (per water agency)	\$33/customer		377	Flat Fee + (\$33x No. of Customers)

The total cost for the City to participate in Addendum 3D to the existing Water Conservation Participation Agreement is \$95,444.88.

## 7. ATTACHMENTS

• Addendum 3D to Water Conservation Participation Agreement

## Addendum 3D to Water Conservation Participation Agreement FY 21-22 Dedicated Irrigation Meters Measurement Program Participant Agency Election and Authorization (as of July 2021) Page 1 of 7

**Program Overview.** State legislation signed by the Governor in 2018 – Assembly Bill (AB) 1668 and Senate Bill (SB) 606, also known as known as The Conservation Framework requires each Urban Water Supplier to calculate and report their Urban Water Use Objective by January 1, 2024, and to stay within their calculated annual water budget.

The Urban Water Use Objective is an estimate of aggregate efficient water use based on:

- Indoor Residential Use (population x gpcd standard);
- Outdoor Residential Use (based on measurements of irrigated and irrigable area and local weather data);
- Outdoor Use with Dedicated Irrigation Meters (based on irrigated and irrigable area and local weather data);
- Distribution System Water Losses;
- Approved Variances; and
- Potable Reuse Bonus.

Although the Department of Water Resources (DWR) will provide residential outdoor landscape measurements, Urban Water Suppliers are responsible for measuring landscape that is irrigated and irrigable by dedicated irrigation meters. As a way to provide assistance to MWDOC member Urban Water Suppliers (hereafter Participant Agency or Participant Agencies), MWDOC has entered into an Agreement with Quantum Spatial, Inc., (Quantum) and arranged for Metropolitan funding and Santa Ana Watershed Project Authority (SAWPA) funding, where applicable, to provide landscape area measurements associated with dedicated irrigation meters (the Program), which may include the creation of water efficiency budgets for dedicated landscape meter customers.

There are two main methods for capturing landscape areas: (1) remote measurement; and (2) in-field measurement. The remote method includes Quantum using 3", 4-band aerial imagery to map and measure irrigated and irrigable areas. The in-field method involves sending field crews to the site to obtain information necessary to measure the landscape area. A third option may be available, which includes utilizing statistical methods to create estimated area measurements. This could be utilized in a situation where customer contact is imperative, yet the site is unresponsive. All methodologies will result in irrigated and irrigable area analysis (corrected for slope at slopes steeper than 15 degrees) will occur using GIS software once the irrigation areas, as mapped in the final database, are confirmed as final. A summary of Quantum's approach to mapping irrigated and irrigable areas for a meter service area using remotely sensed data, field verification, or statistical methodologies (Services) is set forth below.

**Remotely Sensed Mapping Approach:** The imagery source used for this project will be MWDOC-provided 3", 4-band imagery flown in Summer/Fall of 2020. If for any reason this imagery is unable to be used, MWDOC will direct Quantum which source to use in its place.

Quantum will define the meter service area and meter location, if the Participant Agency does not already have current data available. Quantum will run Quantum proprietary landscape area

## Addendum 3D to Water Conservation Participation Agreement FY 21-22 Dedicated Irrigation Meters Measurement Program Participant Agency Election and Authorization (as of July 2021) Page 2 of 7

mapping models across each customer's meter service area. With this as the starting point for the irrigated and irrigable areas, Quantum will then 'heads-up' digitize to correct for any anomalies in the modeled output. Once a draft of the irrigation areas is complete, Quantum will schedule an online review session with each dedicated irrigation meter customer. Prior to the meeting, Quantum will send a series of maps to the customer (or GIS files if the customer can utilize them) to allow for review of the data prior to the collaborative meeting. During the web meeting, Quantum mapping technicians will share their screens and interactively walk through any requested and required edits with the customer. Once finalized, Quantum will receive formal sign off that the working session has concluded in an acceptable final product. Quantum will log the date, time, and customer name in the database records so there is a metadata trail showing that the review meeting occurred, and that the data were approved. It is possible that the end customer will not respond to the project requests and, under those circumstances, the Participant Agency or MWDOC (if directed by Participant Agency) can sign off on the classification and delineation.

In-Field Mapping Approach: If field mapping of irrigated and irrigable areas is deemed necessary for any customer, Quantum will employ the use of the WaterviewCII<sup>™</sup> field mapping application to capture key features and georeferenced locations of the meter, service area boundary, and areas of irrigated and irrigable areas. The WaterViewCII<sup>™</sup> Field App developed by Eagle Aerial Solutions gives the user the ability to work in the field to accurately identify CII water meters, geolocate the meters, classify the meter type, and help measure the irrigated area that the individual meters serve by drawing a polygon corresponding to the observed coverage area served by that meter. The data can be seamless integrated into the WaterViewCII<sup>™</sup> software solution, described below, or exported for use in other GIS environments.

Working closely with the customer, Quantum field staff will walk the property with the GPSenabled tablet and mark the boundaries using the field mapping application. After the extent of the irrigated and irrigable area has been defined in the field and marked on the application, the field crew will upload the file to Quantum's internally shared database location. Once loaded, Quantum in-office mapping technicians will finalize the mapping of the irrigated and irrigable areas with the field-collected information. This will be achieved by the dedicated irrigation customer via the same screen sharing conference call process outlined in the above. When appropriate, the Participant Agency or MWDOC (if directed by Participant Agency) can approve for the customer.

**Statistical Mapping Approach:** The statistical mapping approach will be used, with Participant Agency permission, under the conditions where there is no response from the customer and an inability to verify the meter boundary, either in the field or remotely. Under these conditions, Quantum will use the MWDOC-provided 3", 4-band imagery flown in Summer/Fall of 2020 as described above to derive the landscape area of the customer's parcel. Utilizing the best available boundary information, Quantum will create a map of the irrigated landscape area. Then using water use information provided by the Participant Agency via MWDOC, Quantum will assign water use rates to each landscape unit based on information gathered from adjacent mapped parcels. The meter area boundary will be incrementally

## Addendum 3D to Water Conservation Participation Agreement FY 21-22 Dedicated Irrigation Meters Measurement Program Participant Agency Election and Authorization (as of July 2021) Page 3 of 7

adjusted using a series of logical steps until the actual water use recorded for the meter matches within 5% of the landscape area multiplied by the derived water use rates. These estimated areas and boundaries will be provided to MWDOC for sign off prior to completion. This approach will not be utilized unless agreed to by the Participant Agency or MWDOC (if directed by Participant Agency). It should be noted that the meter service point for this estimate will be approximate and will be based on information provided by the Participant Agency and not the customer.

Optional Service: Calculating Water Budgets Quantum will provide water efficiency budget calculations for the customers included in this project when specified by MWDOC for a specific Participant Agency or Participant Agency customer(s). The water budget will be calculated using the formula below and updated periodically with data from local CIMIS stations. Quantum's intent for the water budget is to mimic the aggregate outdoor water use budget recommended by DWR/SWRCB and adopted by the legislature. The formula set forth below (Water Budget Equation) is the current recommendation, but may be subject to change at MWDOC's request, to best fit with Conservation Framework methodology. This Water Budget Equation may also be adjusted per MWDOC approval and/or request by the Participant Agency.

$$(II + B) \times ETAF_{ii} \times (0.62) \times (ETo - Peff) = Water Budget$$

Where:

II = Irrigated Area ETAF<sub>ii</sub> = Evapotranspiration adjustment factor for Irrigated Area (TBD; note, areas irrigated with recycled water may be assigned a different ETAF) INI = irrigable area (not currently irrigated) ET<sub>0</sub> = Reference evapotranspiration Peff = Effective precipitation B = Buffer Step 1: B= 0 Step 2: B= p x INI P= .20

There are two potential options for calculating water budgets: (1) the fee-based WaterView Portal - Eagle Aerial's designed application to manage this data and estimate water budgets, as well as provide analytical tools that districts can use to compare actual water use against estimated budgets; or (2) a no-cost Excel Model based approach, which involves the export of the landscape area for each parcel into an excel sheet and the modeling of the water budget using CIMIS data and the Water Budget Equation. This deliverable will include the data points needed for budget calculation such as CIMIS station, landscape area. The estimate will be based on a snapshot of daily ETo (as opposed to updated ETo data over time included in the WaterView Portal), summarized into monthly summaries.

## Addendum 3D to Water Conservation Participation Agreement FY 21-22 Dedicated Irrigation Meters Measurement Program Participant Agency Election and Authorization (as of July 2021) Page 4 of 7

In order to access Quantum's Services through MWDOC, Participant agency must complete and sign this Addendum 4B, sign and return the attached Non-Disclosure Agreement, and provide upfront co-funding as set forth below.

hereby

### Election to Participate in Dedicated Irrigation Meters Measurement Program.

By checking the box below,

Name of Participant Agency

elects to participate in the Program.

Election to Participate in Dedicated Irrigation Meter Measurement Program

**Participant Agency Obligations.** As a condition of participation, Participant Agency understands and agrees to the following:

- Participant Agency will use reasonable efforts to assist MWDOC and Quantum with customer outreach within the Participant Agency's service area.
- Participant Agency will provide Quantum with an executed copy of Quantum's Non-Disclosure Agreement, customer billing service data for Participant Agency's selected dedicated irrigation meter accounts and, if available, other customer information such as assessor parcel numbers, GIS files, and/or NAIC codes.
- Based on the number of customers selected by Participant Agency for inclusion in the Program and the methods of measurement, providing MWDOC with upfront co-funding prior to the Program commencing in Participant Agency's service area.

**Participant Agency Co-Funding.** Participant Agency agrees to provide co-funding for the Program in the amounts specified in the Tables below. Co-funding will be provided on a per Customer basis up to the Not to Exceed funding limit. Participant Agency understands that cost calculations are based on the best available information and are subject to change:

### Addendum 3D to Water Conservation Participation Agreement FY 21-22 Dedicated Irrigation Meters Measurement Program Participant Agency Election and Authorization (as of July 2021) Page 5 of 7

#### Table 1

		MWDOC	Cost Share			
Methodology	Cost per Customer*	MET Funding	SAWPA Funding PER METER**	Quantity of Agency Customers	Quantity of Agency Meters	Not to Exceed Funding Limit For Fiscal Year 2021-2022
Remote Measurement	\$258.33	\$85.00	\$10.50	_286	425	\$ <u>45,109.</u> 88
Field Measurement	\$465.52	\$85.00	\$10.50		97	\$ <u>26,378.</u> 94
Statistical Measurement	\$131.49	\$65.75	\$10.50	19	28	\$ <u>955.0</u> 6

\*Customer is defined as one billing customer with one or more meter(s) that may irrigate one or more parcels, which are adjacent or within a spatially related area or premise (e.g. Master Association) \*\*SAWPA funding is available only to those agencies located within the Santa Ana River watershed.

#### Table 2 Optional Waterview CII Database Viewer Platform

Category	Cost	Participant Agency Enrolling in Optional Platform (x)	Number of Customers	Not to Exceed Funding Limit For Fiscal Year 2021- 2022
Flat Fee Per Retail Water Agency	\$10,560	⊠ Yes □ No		\$ <u>23,001.00</u>
Cost per customer (per water agency)	\$33/customer			Flat Fee + (\$33x No. of Customers)

#### Addendum 3D to Water Conservation Participation Agreement FY 21-22 **Dedicated Irrigation Meters Measurement Program** Participant Agency Election and Authorization (as of July 2021) Page 6 of 7

By signing below, Participant Agency understands that this is an addendum to the Water Conservation Participation Agreement between MWDOC and Participating Agency and that Participating Agency is bound by the terms and conditions of that Agreement. Addendum 3D is a MWDOC Administered Program as described in the Agreement. Participant Agency also understands and agrees that it is obligated to pay any co-funding amounts and/or optional Platform or Calculation fees, for any Services initiated during the term of this Addendum 3D, regardless of when the Service is completed.

This Addendum and funding authorization is effective as of the date signed below and continues through June 30, 2022 or until a replacement Addendum is approved and implemented by MWDOC, whichever comes first. All Program conditions and invoicing shall be pursuant to the terms of the Water Conservation Participation Agreement. Each form submitted shall include the total authorization of the Agency for the specified time period.

By signing, Participant Agency agrees to these terms.

Participant Agency City of Orange

Authorizing Signature General Manager /Designee Date

Date received:

Approved by

Comments:

#### Addendum 3D to Water Conservation Participation Agreement FY 21-22 Dedicated Irrigation Meters Measurement Program Participant Agency Election and Authorization (as of July 2021) Page 7 of 7

#### ORANGE COUNTY DATA ACQUISITION PARTNERSHIP (OCDAP) AUTHORIZED USER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

#### This ORANGE COUNTY DATA ACQUISITION PARTNERSHIP ("OCDAP") AUTHORIZED USER CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("NDA") is effective as of \_\_\_\_\_, 2021 by \_\_\_\_\_\_("Authorized User").

- Pictometry International Corp., a Delaware company with offices at 100 Town Centre Drive, Suite A, Rochester, HY 14623 ("Pictometry"), and the Southern California Association of Governments ("SCAG") have entered into that certain agreement dated June 25, 2020 ("Agreement") for the delivery of licensed digital mapping data and software ("Licensed Products") to SCAG. Under the Agreement, certain governmental entities, including SCAG departments and non-SCAG Authorized Participants, which participate in OCDAP ("OCDAP Member Agencies") shall be granted copies of or otherwise provided access to the Licensed Products through a Participation Agreement ("Participation Agreement") with SCAG. SCAG, OCDAP, and MWDOC entered into a joint Participation Agreement dated July 9, 2020.
- 2. Pursuant to that Participation Agreement and for purposes of this NDA, the OCDAP Member Agency includes Municipal Water District of Orange County.
- 3. Pursuant to Section 5 of the Participation Agreement, Licensed Products may only be accessed or otherwise used by other entities besides SCAG, such as OCDAP Member Agencies. OCDAP Member Agencies, which includes MWDOC, in turn may choose to share Licensed Products with other partners, contractors or consultants that use the Licensed Products either at their facilities or for any Project (as defined below), provided that such partners, contractors or consultants execute this NDA.
- 4. The undersigned ("Authorized User") desires to use the Licensed Products solely for noncommercial use and for purposes no greater than reasonably needed to achieve the objectives of an actual project ("Project").
- 5. The undersigned Authorized User understands and agrees that the Licensed Products contain trade secret and/or confidential information ("Confidential Information") of Pictometry. Therefore, by signing this NDA, the Authorized User agrees that it will use, and require any of its authorized employees, agents or consultants to use, the Licensed Products solely for the Project, which is a nonexclusive, nontransferable and non-assignable right, from the effective date of this NDA in perpetuity. The Authorized User understands and hereby acknowledges that it shall be solely responsible for assuring its authorized employees, agents, and consultants comply with the terms of this NDA and shall implement whatever methods it deems necessary to assure such compliance.

IN WITNESS WHEREOF, the undersigned Authorized User, by his/her authorized signature, agrees to all terms and conditions of this NDA as of the date set forth below.

#### **AUTHORIZED USER:**

Signature:	Address:
Name:	
Organization:	City/Zip:
Date:	Phone:
	Email:



# Agenda Item

**City Council** 

Item #: 3.	12. 11/	/9/2021	File #: 21-0620
TO:	Honorable Mayor and Members	of the City Counc	il
THRU:	Thomas R. Hatch, Interim City M	anager	
FROM:	Sean deMetropolis, Fire Chief		

## 1. SUBJECT

Participation in a one-time Intergovernmental Transfer with the California Department of Health Care Services and Cal Optima.

#### 2. SUMMARY

A request for City Council approval to participate in a one-time Intergovernmental Transfer for the twelve month period ending December 31, 2021 to access additional Federal Medicaid dollars to support unreimbursed care.

#### 3. **RECOMMENDED ACTION**

- 1. Approve agreements with the California Department of Health Care Services and Cal Optima in the amount of \$487,146, representing \$405,955 in unreimbursed Medicare revenue plus an \$81,191 assessment fee, for a one-time Intergovernmental Transfer; and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Authorize the transfer of \$ 487,146 of reimbursable funds to the California Department of Health Care Services.

#### 4. FISCAL IMPACT

Reimbursable funds of \$487,146 will be advanced to obtain previously unreimbursed Medicaid revenue of approximately \$812,000. Funds are available in the General Fund (100).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a Safe Community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 2: Be a Fiscally Healthy Community

a: Expend fiscal resources responsibly.

## 6. DISCUSSION AND BACKGROUND

An Intergovernmental Transfer (IGT) allows California's Medi-Cal managed care plans to partner with local units of government to access additional federal Medicaid dollars and use them to support unreimbursed care and provide health care services. Since the City provides ambulance transport services and has unreimbursed Medicaid expenses, it became eligible to participate in the IGT

Item #: 3.12.

program in Fiscal Year 2014-2015 (FY15). Currently, the University of California, Irvine (UCI), the City of Newport Beach, and the City of Orange are participants. In Fiscal Years 19 and 20, the City received net additional revenue of \$472,145 and \$478,483 respectively.

Provisions of the IGT require the City to transfer an amount representing 50% of unreimbursed CalOptima patient charges (the IGT amount) to the California State Department of Health Services (DHCS). The City also remits an assessment fee equal to 20% of the IGT amount. DHCS uses the original IGT amount to access the Federal government's highest allowable Medi-Cal reimbursement rate, enabling them to draw down additional Federal funds on behalf of the City. Upon reimbursement from the Federal government, Cal Optima reimburses the City the original IGT amount, the 20% assessment fee, and 50% of the additional reimbursement revenue (the maximum allowed recovery amount under the program). The amount received is based on the rate range and the number of CalOptima providers.

While ultimate funding is not guaranteed, DHCS again reached out to the City to participate in the program for Calendar Year (CY) 21. The details of the City's participation are as follows:

IGT Transfer to DHCS-CY 21	\$	487,955
IGT Amount 20% Admin Fee		405,955 81,191
Total IGT to DHCS	\$	487,955
Estimated IGT Revenue	\$	811,910
50% Additional Revenue to City Total Received back from DHCS	<b>\$</b> \$	<b>405,955</b> 893,101

On November 23, 2020, the City submitted a non-binding letter to DHCS confirming our interest in participating in the program. If the City intends to move forward, two (2) agreements need to be executed:

- 1) Intergovernmental Agreement regarding transfer of public funds between the City and DHCS, and
- 2) Health Plan-Provider Agreement between the City and CalOptima.

Approximate Timeframe for IGT participation:

In November 2020, CalOptima advised DHCS the City will be participating in the IGT program at a funding level of \$442,065.

In December 2021, all agreements will be signed and submitted to DHCS for their review and approval.

In the fourth quarter of calendar year 2022 (CY22), the City will wire DHCS \$487,955 representing

estimated unreimbursed Medicaid expenses for the twelve months ending December 31, 2021.

In the late second quarter of CY22, DHCS will send the additional revenue to CalOptima for disbursement. CalOptima will distribute an estimated amount of \$893,101 back to the City within the 30 days specified in the Provider Agreement, of which \$405,955 is the estimated net revenue to the City.

Specifics of this IGT participation require additional monies received to be used for transport services. Allowable expenditures include salaries for transport personnel, related materials and supplies, and capital expenses. While there are no specific guidelines or obligations, the additional revenue received should be used within a year after receipt. There are no guarantees that future monies for reimbursement will be available; as such, this revenue should be viewed as one-time funding only. Although funding is not guaranteed, successful participation in each of the FY15 through CY 20 programs did net the City supplementary revenue, and staff recommends the City seek this additional reimbursement.

### 7. ATTACHMENTS

- Intergovernmental Agreement regarding transfer of public funds between the City of Orange and DHCS
- Provider Agreement between the City of Orange and CalOptima



# Agenda Item

**City Council** 

Item #: 3.	12. 11/	/9/2021	File #: 21-0620
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THRU:	Thomas R. Hatch, Interim City M	anager	
FROM:	Sean deMetropolis, Fire Chief		

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### 7. ATTACHMENTS

- Intergovernmental Agreement regarding transfer of public funds between the City of Orange and DHCS
- Provider Agreement between the City of Orange and CalOptima

#### INTERGOVERNMENTAL AGREEMENT REGARDING TRANSFER OF PUBLIC FUNDS

This Agreement is entered into between the CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES ("DHCS") and the CITY OF ORANGE ("GOVERNMENTAL FUNDING ENTITY") with respect to the matters set forth below.

The parties agree as follows:

#### AGREEMENT

#### 1. <u>Transfer of Public Funds</u>

1.1 The GOVERNMENTAL FUNDING ENTITY agrees to make a transfer of funds to DHCS pursuant to sections 14164 and 14301.4 of the Welfare and Institutions Code. The amount transferred shall be based on the sum of the applicable rate category per member per month ("PMPM") contribution increments multiplied by member months, as reflected in Exhibit 1. The GOVERNMENTAL FUNDING ENTITY agrees to initially transfer amounts that are calculated using the Estimated Member Months in Exhibit 1, which will be reconciled to actual enrollment for the service period of January 1, 2021 through December 31, 2021 in accordance with Sub-Section 1.3 of this Agreement. The funds transferred shall be used as described in Sub-Section 2.2 of this Agreement. The funds shall be transferred in accordance with the terms and conditions, including schedule and amount, established by DHCS.

1.2 The GOVERNMENTAL FUNDING ENTITY shall certify that the funds transferred qualify for Federal Financial Participation pursuant to 42 C.F.R. part 433, subpart B, and are not derived from impermissible sources such as recycled Medicaid payments, Federal money excluded from use as State match, impermissible taxes, and non-bona fide providerrelated donations. Impermissible sources do not include patient care or other revenue received from programs such as Medicare or Medicaid to the extent that the program revenue is not obligated to the State as the source of funding.

1.3 DHCS shall reconcile the "Estimated Member Months," in Exhibit 1, to actual enrollment in HEALTH PLAN(S) for the service period of January 1, 2021 through December 31, 2021 using actual enrollment figures taken from DHCS records. Enrollment reconciliation will occur on an ongoing basis as updated enrollment figures become available. Actual enrollment figures will be considered final two years after December 31, 2021. If reconciliation results in an increase to the total amount necessary to fund the nonfederal share of the payments described in Sub-Section 2.2, the GOVERNMENTAL FUNDING ENTITY agrees to transfer any additional funds necessary to cover the difference. If reconciliation results in a decrease to the total amount necessary to fund the nonfederal share of the payments described in Sub-Section 2.2, DHCS agrees to return the unexpended funds to the GOVERNMENTAL FUNDING ENTITY. If DHCS and the GOVERNMENTAL FUNDING ENTITY mutually agree, amounts due to or owed by the GOVERNMENTAL FUNDING ENTITY may be offset against future transfers.

#### 2. <u>Acceptance and Use of Transferred Funds</u>

2.1 DHCS shall exercise its authority under section 14164 of the Welfare and Institutions Code to accept funds transferred by the GOVERNMENTAL FUNDING ENTITY pursuant to this Agreement as IGTs, to use for the purpose set forth in Sub-Section 2.2.

2.2 The funds transferred by the GOVERNMENTAL FUNDING ENTITY pursuant to Section 1 and Exhibit 1 of this Agreement shall be used to fund the non-federal share of Medi-Cal Managed Care actuarially sound capitation rates described in section 14301.4(b)(4) of the Welfare and Institutions Code as reflected in the contribution PMPM and rate categories reflected in Exhibit 1. The funds transferred shall be paid, together with the related Federal Financial Participation, by DHCS to HEALTH PLAN(S) as part of HEALTH PLAN(S)' capitation rates for the service period of January 1, 2021 through December 31, 2021, in accordance with section 14301.4 of the Welfare and Institutions Code.

2.3 DHCS shall seek Federal Financial Participation for the capitation rates specified in Sub-Section 2.2 to the full extent permitted by federal law.

2.4 The parties acknowledge that DHCS will obtain any necessary approvals from the Centers for Medicare and Medicaid Services.

2.5 DHCS shall not direct HEALTH PLAN(S)' expenditure of the payments received pursuant to Sub-Section 2.2.

3. <u>Assessment Fee</u>

3.1 DHCS shall exercise its authority under section 14301.4 of the Welfare and Institutions Code to assess a 20 percent fee related to the amounts transferred pursuant to Section 1 of this Agreement, except as provided in Sub-Section 3.2. GOVERNMENTAL FUNDING ENTITY agrees to pay the full amount of that assessment in addition to the funds transferred pursuant to Section 1 of this Agreement.

3.2 The 20-percent assessment fee shall not be applied to any portion of funds transferred pursuant to Section 1 that are exempt in accordance with sections 14301.4(d) or 14301.5(b)(4) of the Welfare and Institutions Code. DHCS shall have sole discretion to determine the amount of the funds transferred pursuant to Section 1 that will not be subject to a 20 percent fee. DHCS has determined that \$0.00 of the transfer amounts will not be assessed a 20 percent fee, subject to Sub-Section 3.3.

3

3.3 The 20-percent assessment fee pursuant to this Agreement is nonrefundable and shall be wired to DHCS separately from, and simultaneous to, the transfer amounts made under Section 1 of this Agreement. If, at the time of the reconciliation performed pursuant to Sub-Section 1.3 of this Agreement, there is a change in the amount transferred that is subject to the 20-percent assessment in accordance with Sub-Section 3.1, then a proportional adjustment to the assessment fee will be made.

#### 4. <u>Amendments</u>

4.1 No amendment or modification to this Agreement shall be binding on either party unless made in writing and executed by both parties.

4.2 The parties shall negotiate in good faith to amend this Agreement as necessary and appropriate to implement the requirements set forth in Section 2 of this Agreement.

5. <u>Notices</u>. Any and all notices required, permitted or desired to be given hereunder by one party to the other shall be in writing and shall be delivered to the other party personally or by United States First Class, Certified or Registered mail with postage prepaid, addressed to the other party at the address set forth below:

#### To the GOVERNMENTAL FUNDING ENTITY:

Thomas R. Hatch, Interim City Manager City of Orange 300 E. Chapman Ave. Orange, CA 92866 <u>thatch@cityoforange.org</u>

With copies to:

Katrin Bandhauer, Assistant Finance Director City of Orange 300 E. Chapman Ave. Orange, CA 92866 <u>kbandhauer@cityoforange.org</u>

To DHCS:

Vivian Beeck California Department of Health Care Services Capitated Rates Development Division 1501 Capitol Ave., MS 4413 Sacramento, CA 95814 Vivian.Beeck@dhcs.ca.gov

#### 6. <u>Other Provisions</u>

6.1 This Agreement contains the entire Agreement between the parties with respect to the Medi-Cal payments described in Sub-Section 2.2 of this Agreement that are funded by the GOVERNMENTAL FUNDING ENTITY, and supersedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations or other agreements between the GOVERNMENTAL FUNDING ENTITY and DHCS relating to the subject matter of this Agreement. This Agreement is not, however, intended to be the sole agreement between the parties on matters relating to the funding and administration of the Medi-Cal program. This Agreement shall not modify the terms of any other agreement, existing or entered into in the future, between the parties.

6.2 The non-enforcement or other waiver of any provision of this Agreement shall not be construed as a continuing waiver or as a waiver of any other provision of this Agreement. 6.3 Sections 2 and 3 of this Agreement shall survive the expiration or termination of this Agreement.

6.4 Nothing in this Agreement is intended to confer any rights or remedies on any third party, including, without limitation, any provider(s) or groups of providers, or any right to medical services for any individual(s) or groups of individuals. Accordingly, there shall be no third party beneficiary of this Agreement.

6.5 Time is of the essence in this Agreement.

6.6 Each party hereby represents that the person(s) executing this Agreement on its behalf is duly authorized to do so.

7. <u>State Authority</u>. Except as expressly provided herein, nothing in this Agreement shall be construed to limit, restrict, or modify the DHCS' powers, authorities, and duties under Federal and State law and regulations.

8. <u>Approval</u>. This Agreement is of no force and effect until signed by the parties.

9. <u>Term</u>. This Agreement shall be effective as of January 1, 2021 and shall expire as of June 30, 2024 unless terminated earlier by mutual agreement of the parties.

#### SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on

the date of the last signature below.

THE CITY OF ORANGE:

By:

Date: \_\_\_\_\_

Mark A Murphy, Mayor

\_\_\_\_\_

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning, Assistant City Attorney

THE STATE OF CALIFORNIA, DEPARTMENT OF HEALTH CARE SERVICES:

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

Date: \_\_\_\_\_

Rafael Davtian, Division Chief, Capitated Rates Development Division

#### Exhibit 1

Health Plan:	Cal	Optima			
Rating Region:	Ora	inge			
Service Period	1/20	021-12/2021			
					Estimated
		Contribution	Estimated	Co	ntribution (Non-
Rate Category		PMPM	Member Months*	ł	Federal Share)
Child - non MCHIP	\$	0.03	2,432,076	\$	72,962
Child - MCHIP	\$	0.02	1,276,065	\$	25,521
Adult - non MCHIP (non-CCI)	\$	0.07	1,237,366	\$	86,616
Adult - MCHIP (non-CCI)	\$	0.05	31,903	\$	1,595
ACA Optional Expansion	\$	0.02	3,297,759	\$	65,955
SPD	\$	0.16	494,384	\$	79,101
SPD/Full-Dual (non-CCI)	\$	0.05	24,161	\$	1,208
LTC	\$	1.72	17,540	\$	30,169
Whole Child Model	\$	0.38	112,706	\$	42,828
Estimated Total			8,923,960	\$	405,955

\* Note that Estimated Member Months are subject to variation, and the actual total Contribution (Non-Federal Share) may differ from the amount listed here.

#### HEALTH PLAN-PROVIDER AGREEMENT INTERGOVERNMENTAL TRANSFER RATE RANGE PROGRAM AGREEMENT

This Agreement is made this 1st day of November, 2021, by and between CALOPTIMA, a California public agency hereinafter referred to as "PLAN", and the City of Orange, a California municipal corporation operating through its Fire Department, hereinafter referred to as "PROVIDER".

#### **RECITALS**:

WHEREAS, PLAN is a public agency formed pursuant to California Welfare and Institutions Code Section 14087.54 and Orange County Ordinance No. 3896 as amended by Ordinance Nos. 00-8, 05-008, 06-012, 09-001, 11-013, 14-002 and 16-001, and is party to a Medi-Cal managed care contract with DHCS, entered into pursuant to Welfare and Institutions Code Section 14087.3, under which PLAN arranges and pays for the provision of covered Medi-Cal health care services to eligible Medi-Cal members residing in Orange County;

WHEREAS, the City of Orange is an emergency transport provider who provides transportation on a non-contract basis, including to CalOptima Medi-Cal Members;

WHEREAS, PLAN and PROVIDER desire to enter into this Agreement to provide for Medi-Cal managed care capitation rate increases to PLAN as a result of intergovernmental transfers ("IGTs") from the City of Orange (GOVERNMENTAL FUNDING ENTITY) to the California Department of Health Care Services ("State DHCS") to maintain the availability of Medi-Cal health care services to Medi-Cal beneficiaries.

NOW, THEREFORE, PLAN and PROVIDER hereby agree as follows:

#### IGT MEDI-CAL MANAGED CARE CAPITATION RATE RANGE INCREASES

#### 1. IGT Capitation Rate Range Increases to PLAN

#### A. <u>Payment</u>

Should PLAN receive any Medi-Cal managed care capitation rate increases from State DHCS where the nonfederal share is funded by the GOVERNMENTAL FUNDING ENTITY specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds, #21-10183, ("Intergovernmental Agreement") effective for the period of and January 1, 2021 through December 31, 2021 for Intergovernmental Transfer Medi-Cal Managed Care Rate Range Increases ("IGT MMCRRIs"), PLAN shall pay to PROVIDER the amount of the IGT MMCRRIs received from State DHCS, in accordance with paragraph 1.E below regarding the form and timing of Local Medi-Cal Managed Care Rate Range ("LMMCRR") IGT Payments. LMMCRR IGT Payments paid to PROVIDER shall not replace or supplant any other amounts paid or payable to PROVIDER by PLAN.

#### B. <u>Health Plan Retention</u>

(1) a. PLAN shall retain 31.71 percent from the Medi-Cal managed care rate increases paid to PLAN by DHCS as described in this agreement prior to disbursing LMMCRR IGT Payments to PROVIDER. The retained funds will be expended by PLAN for Covered Services under PLAN's contract with DHCS for Medi-Cal, in either the State fiscal year received, or in subsequent State fiscal years, as appropriated by the CalOptima Board of Directors.

Each provider's share of the retained funds shall be calculated based on the provider's proportionate share of the LMMCRR IGT payment made by PLAN in Orange County.

b. The amounts referenced in this agreement are estimates. The parties understand and agree that the total amount of the Medi-Cal managed care capitation rate increases paid by DHCS to PLAN may fluctuate as a result of enrollment. The parties further understand and agree that any such fluctuations will likewise affect the amount to be retained by the PLAN and the amount payable to PROVIDER by the same percentage as the variance in the capitation rate increases, if any.

(2) PLAN will not retain any other portion of the IGT MMCRRIs received from the State DHCS other than those mentioned above.

#### C. <u>Conditions for Receiving Local Medi-Cal Managed Care Rate Range IGT Payments</u>

As a condition for receiving LMMCRR IGT Payments, PROVIDER shall, as of the date the particular LMMCRR IGT Payment is due:

(1) continue to provide emergency transport services to PLAN Members promptly and in a manner which ensures access to care consistent with PROVIDER's regular business practices for providing such services; and

(2) not discriminate against PLAN Members or in any way impose limitations on the acceptance of PLAN Members for care or treatment that are not imposed on other patients of PROVIDER.

#### D. <u>Schedule and Notice of Transfer of Non-Federal Funds</u>

1. PROVIDER shall provide PLAN with a copy of the schedule regarding the transfer of funds to State DHCS referred to in the Intergovernmental Transfer Agreement within fifteen (15) calendar days of establishing such schedule with State DHCS. Additionally, PROVIDER shall notify PLAN, in writing, no less than seven (7) calendar days prior to any changes to an existing schedule, including but not limited to, changes to the amounts specified therein.

2. PROVIDER shall provide PLAN with written notice of the amount and date of the transfer within seven (7) calendar days after funds have been transferred to State DHCS for use as the nonfederal share of any IGT MMCRRIs.

#### E. Form and Timing of Payments

PLAN agrees to pay LMMCRR IGT Payments to PROVIDER in the following form and according to the following schedule:

(1) PLAN agrees to pay the LMMCRR IGT Payments to PROVIDER using the same mechanism through which compensation and payments are normally paid to PROVIDER (e.g., electronic transfer).

(2) PLAN will pay the LMMCRR IGT Payments to PROVIDER no later than thirty (30) calendar days after receipt of the IGT MMCRRIs from State DHCS.

#### F. <u>Consideration</u>

(1) As consideration for the LMMCRR IGT Payments, PROVIDER shall use the LMMCRR IGT Payments for the following purposes and shall treat the LMMCRR IGT Payments in the following manner:

(a) The LMMCRR IGT Payments shall represent compensation for emergency ambulance services rendered to Medi-Cal PLAN members by PROVIDER between January 1, 2021, and December 31, 2021, and shall be used by PROVIDER solely to fund the costs that exceed the fee-for-service rates paid by Medi-Cal PLAN for covered services provided to Medi-Cal PLAN Members during that period.

(b) To the extent that total payments received by PROVIDER for any State fiscal year under this Agreement exceed the cost of Covered Services provided to Medi-Cal PLAN members by PROVIDER during that fiscal year, any remaining LMMCRR IGT Payment amounts shall constitute an overpayment, and shall by returned to Medi-Cal PLAN pursuant to the provisions of Section 1.K., below

(2) Both parties agree that none of these funds, either from the GOVERNMENTAL FUNDING ENTITY or federal matching funds will be recycled back to the GOVERNMENTAL FUNDING ENTITY'S general fund, the State, or any other intermediary organization. Payments made by the health plan to providers under the terms of this Agreement constitute patient care revenues.

#### G. <u>PLAN's Oversight Responsibilities</u>

PLAN's oversight responsibilities regarding PROVIDER's use of the LMMCRR IGT Payments shall be limited as described in this paragraph. PLAN shall request, within thirty (30) calendar days after the end of each State fiscal year in which LMMCRR IGT Payments were transferred to PROVIDER, a written confirmation that states whether and how PROVIDER complied with the provisions set forth in Paragraph 1.F above. In each instance, PROVIDER shall provide PLAN with written confirmation of compliance within thirty (30) calendar days of PLAN's request.

#### H. <u>Cooperation Among Parties</u>

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMMCRR IGT Payments, PROVIDER and PLAN agree to work together in all respects to support and preserve the LMMCRR IGT Payments to the full extent possible on behalf of the safety net in Orange County.

#### I. <u>Reconciliation</u>

Within one hundred twenty (120) calendar days after the end of each of PLAN's fiscal years in which LMMCRR IGT Payments were made to PROVIDER, PLAN shall perform a reconciliation of the LMMCRR IGT Payments transmitted to the PROVIDER during the preceding fiscal year to ensure that the supporting amount of IGT MMCRRIs were received by PLAN from State DHCS. PROVIDER agrees to return to PLAN any overpayment of LMMCRR IGT Payments made in error to PROVIDER within thirty (30) calendar days after receipt from PLAN of a written notice of the overpayment error, unless PROVIDER submits a written objection to PLAN. Any such objection shall be resolved in accordance with the dispute resolution process set forth in Section 1.H. The reconciliation processes established under this paragraph are distinct from the indemnification provisions set forth in Paragraph 1.J below. PLAN agrees to transmit to the PROVIDER any underpayment.

#### J. <u>Indemnification</u>

PROVIDER agrees to and acknowledges the following: (1) PLAN has no obligation to make any payments hereunder until PLAN has received IGT MMCRRIs from State DHCS; (2) that PLAN is not responsible for State DHCS payments to PLAN, including any mathematical calculations made by DHCS, and (3) PLAN is not responsible for the timing of the payments from DHCS to PLAN (including the conditions precedent to the timing of such payments which includes the timing of DHCS submission to CMS and/or CMS review and approval). In addition, PLAN and PROVIDER agree and acknowledge that nothing herein is intended to create an obligation on the part of PLAN to agree to delays in capitation payment(s) from DHCS in order to accommodate this IGT.

#### K. <u>Overpayments and CalOptima Right to Recover</u>

PROVIDER has an obligation to report any overpayment identified by PROVIDER, and to repay such overpayment to CalOptima within sixty (60) days of such identification by PROVIDER, or of receipt of notice of an overpayment identified by CalOptima. PROVIDER acknowledges and agrees that, in the event that CalOptima determines that an amount has been overpaid or paid in duplicate, or that funds were paid which were not due under this Contract to PROVIDER, CalOptima shall have the right to recover such amounts from PROVIDER by recoupment or offset from current or future amounts due from CalOptima to PROVIDER, after giving notice and an opportunity to return/pay such amounts. This right to recoupment or offset shall extend to any amounts due from PROVIDER to CalOptima, including, but not limited to, amounts due because of overpayments as described in the provisions of this agreement.

#### 2. <u>Term</u>

The term of this agreement shall commence on January 1, 2021 and shall terminate on June 30, 2024.

### **SIGNATURES**

HEALTH PLAN: CalOptima		
By:	Date:	
PROVIDER: the City of Orange		
By: Mark A. Murphy, Mayor	Date:	
ATTEST:		
Pamela Coleman, City Clerk	Date:	
APPROVED AS TO FORM:		
Mary E. Binning, Asst City Attorney	Date:	



# Agenda Item

City Council

Item #: 3.	.13. 11/9/2021	File #: 21-0585
TO:	Honorable Mayor and Members of the City Co	uncil
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Sean deMetropolis, Fire Chief	

## 1. SUBJECT

Appropriation of \$61,574.49 in State of California Office of Emergency Services funding received.

## 2. SUMMARY

Costs for strike team and individual overhead deployments represent non-budgeted expenditures for the Fire Department. These costs are reimbursed by the State of California Office of Emergency Services at a later date. Staff is requesting that funds be appropriated into the appropriate expenditure accounts for Fiscal Year 2021-2022.

#### 3. RECOMMENDED ACTION

- 1. Accept into the City's revenue budget \$61,574.49 in strike team reimbursement funds from the California Office of Emergency Services (Cal-OES), into the revenue account numbers for Cal-OES reimbursements as specified in Section 6 of the staff report.
- 2. Authorize the appropriation of \$61,195.61 into the expenditure account numbers for Overtime-Safety as specified in Section 6 of the staff report.
- 3. Authorize the appropriation of \$378.88 into the expenditure account numbers for Strike Team Expenditures as specified in Section 6 of the staff report.

## 4. FISCAL IMPACT

The total appropriations for this reimbursement are funded by the additional revenue received from the State of California Office of Emergency Services.

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a. Provide staffing and resources to deliver services that ensure public safety.

## 6. DISCUSSION AND BACKGROUND

The Orange City Fire Department is a party to a state-level agreement with the State of California Office of Emergency Services (Cal-OES) to provide fire and emergency assistance to state and federal fire agencies. This agreement is managed by Cal-OES and referred to as the California Fire Assistance Agreement (CFAA). Under this agreement, the Orange City Fire Department generally provides resources two different ways: Strike Teams and Individual Overhead.

Item #: 3.13.

Strike team deployments involve an Engine Company, or a Battalion Chief, or a Deputy Chief responding to an incident with their vehicle, as part of a multi-agency team. Individual Overhead resources respond to fill a specific role for an incident, such as Safety Officer or Line Emergency Medical Technician (EMT).

Upon return from an incident, reimbursement paperwork and invoices are submitted to Cal-OES. The Fire Department recently received reimbursement payments for the Tick Fire for \$14,336.87, the Getty Fire for \$6,227.39, the Willow Fire for \$27,550.62, and the Tennant Fire for \$13,459.61. Staff is requesting that funds be appropriated into the appropriate expenditure accounts for Fiscal Year 2021-2022. The additional funds will reimburse Fire Department overtime and travel expenditures incurred during these incidents.

Staff recommends acceptance of revenue and appropriation of expenditures as follows:

Cal-OES reimbursements (revenue):

\$ 14,336.87	100.3024.48212.40224 - Tick Fire
6,227.39	100.3024.48212.40226 - Getty Fire
27,550.62	100.3024.48212.40269 - Willow Fire
13,459.61	100.3024.48212.40270 - Tennant Fire
\$ 61,574.49	

Overtime-Safety (expenditures):

\$ 14,336.87	100.3024.50221.40224 - Tick Fire
6,227.39	100.3024.50221.40226 - Getty Fire
27,550.62	100.3024.50221.40269 - Willow Fire
 13,080.73	100.3024.50221.40270 - Tennant Fire
\$ 61,195.61	

Strike Team (expenditures):

\$ 378.88 100.3024.53860.40270 - Tennant Fire

## 7. ATTACHMENTS

None.



# Agenda Item

City Council

Item #: 3.	.13. 11/9/2021	File #: 21-0585
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THRU:	Thomas R. Hatch, Interim City Manager	
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Strike Team (expenditures):

\$ 378.88 100.3024.53860.40270 - Tennant Fire

## 7. ATTACHMENTS

None.



# Agenda Item

**City Council** 

ltem #: 3	.14. 11/9/2021	File #: 21-0621
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

## 1. SUBJECT

Approval of plans and specifications for Annual Concrete Replacement, Fiscal Year 2021-2022; and authorization to advertise Bid No. 21-22.19.

### 2. SUMMARY

Plans and specifications have been completed and the project is ready to be advertised for bids. The total estimated construction cost, including contingencies and construction engineering (15%), is \$726,000.

#### 3. **RECOMMENDED ACTION**

- 1. Approve plans and specifications and authorize advertising for bids for Annual Concrete Replacement, Fiscal Year 2021-2022; SP-4181.
- 2. Authorize the appropriation of \$400,000 from Citywide TSIP unreserved fund balance to expenditure account number 287.5011.56330.13120, Citywide TSIP Pavement Management Program.

## 4. FISCAL IMPACT

The total expenditure, including the 15% contingency, for this project is \$726,000 and will be funded in Pavement Management Program (13120) through:

Measure M (263)	\$326,000
Citywide TSIP (287)	400,000
Total	\$726,000

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

## 6. DISCUSSION AND BACKGROUND

The project is part of the annual street maintenance program to replace at various locations curb, gutter, sidewalk, driveway, cross gutter, and Americans with Disabilities Act (ADA) sidewalk access

Item #: 3.14.

ramps. The Annual Concrete Replacement Project, within the Pavement Management Program (13120), includes a component of annual maintenance services on a scale large enough that these services require an outside contractor. As such, this contract is funded from both the operations and the Capital Improvement Project (CIP) budgets previously approved by Council.

Utilizing the City's Pavement Management Plan (PMP) ranking of the current street conditions, City staff prepared a list of streets requiring pavement rehabilitation for Fiscal Year 2021-2022 (FY 22). The street rehabilitation projects are scheduled for authorization to advertise later this fiscal year, and this project will replace all the needed concrete improvements in preparation for the pavement rehabilitation work. Due to extensive ADA ramps reconstruction needs, staff is requesting an \$400,000 appropriation to cover the cost of the ramps.

The total estimated quantities for concrete replacement are as follows:

Item	Qty	Unit	Description
1	1,790	LF	Curb and Gutter
2	10,560	SF	Sidewalk
3	85	EA	ADA Sidewalk Access Ramp
4	360	SF	Driveway Apron
LE - Linear Feet SE - Square Feet EA- Fach			

LF = Linear Feet, SF = Square Foot, EA= Each

Construction is scheduled to begin in February 2022 and is expected to be completed within 90 calendar days.

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA guidelines Section 15301 "Existing Facilities" Class 1 (c). The Notice of Exemption will be filed with the County Recorder's Office upon Council's approval of the plans and specifications.

Specifications and cost estimates are available for review in the Public Works Department.

#### 7. ATTACHMENT

Location Maps



# Agenda Item

**City Council** 

ltem #: 3	.14. 11/9/2021	File #: 21-0621	
то:	Honorable Mayor and Members of the City Council		
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Works Director		

## 1. SUBJECT

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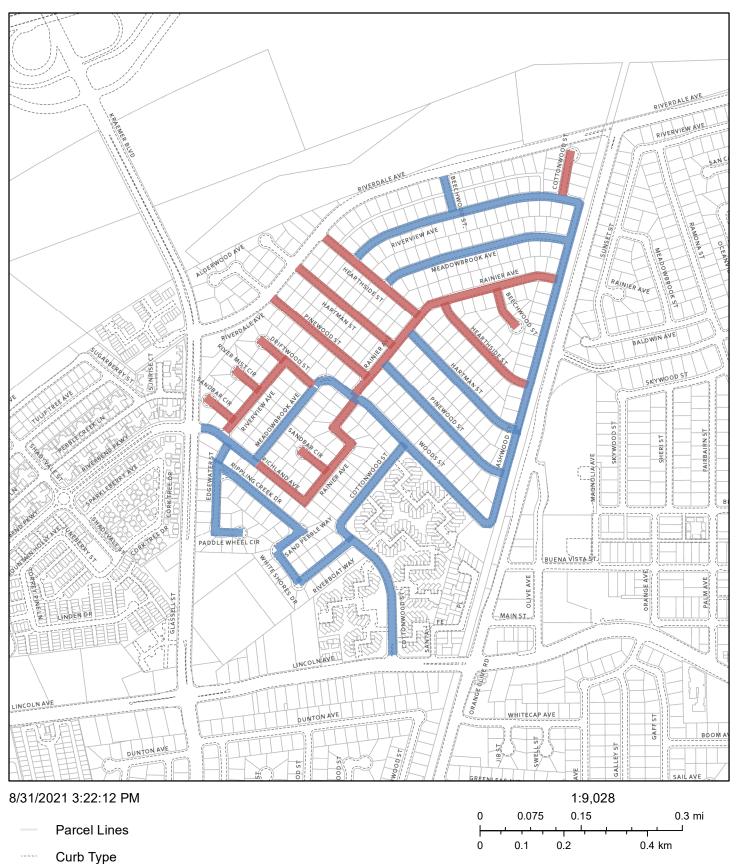
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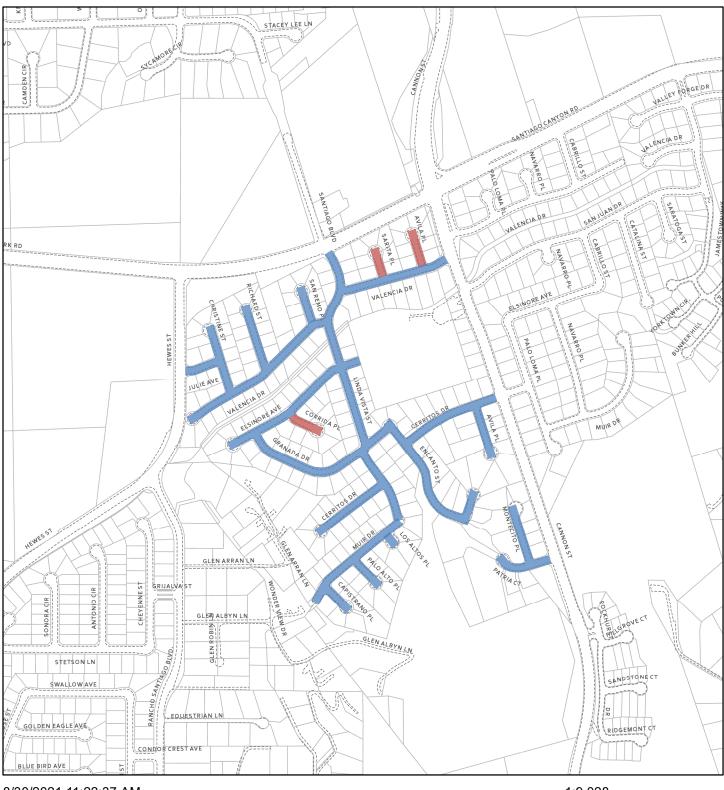
Location Maps



**Slurry Seal Locations** 

**Overlay Locations** 

Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community

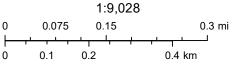








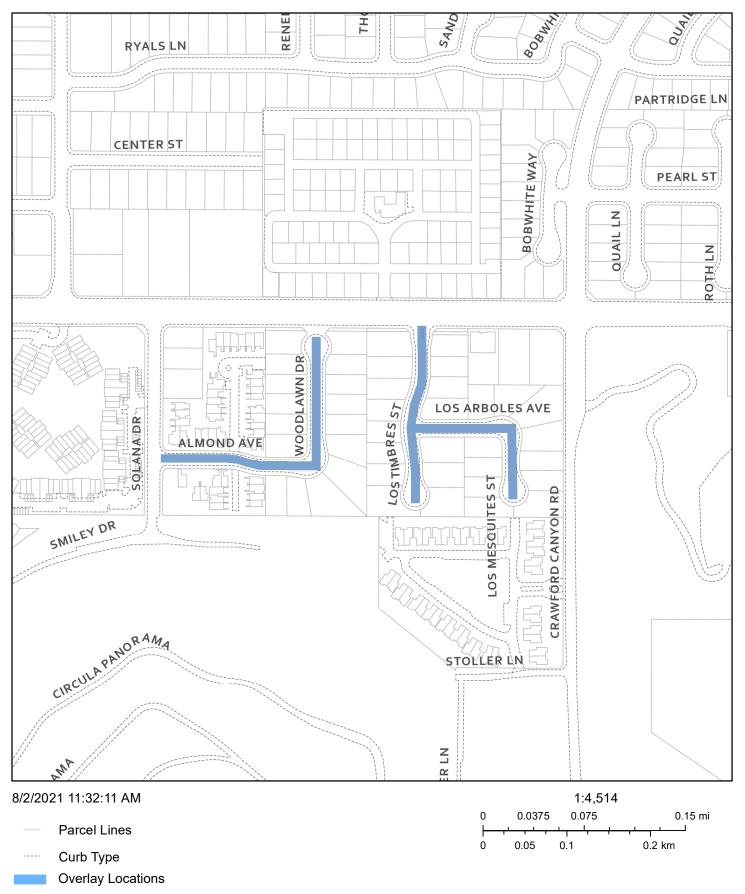
- Parcel Lines
- Curb Type
  - Overlay Locations





Curp Type

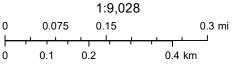
Overlay Locations





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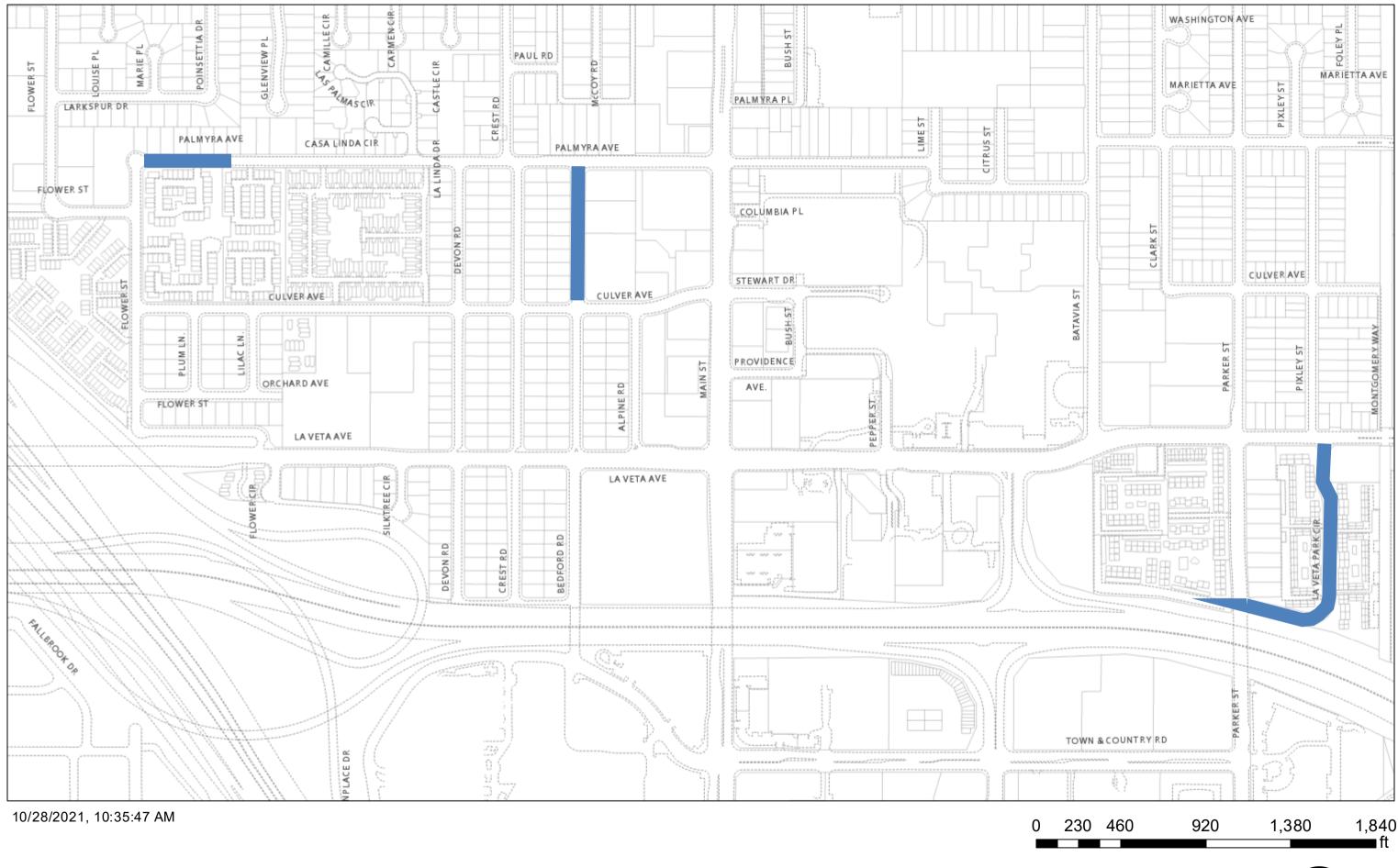
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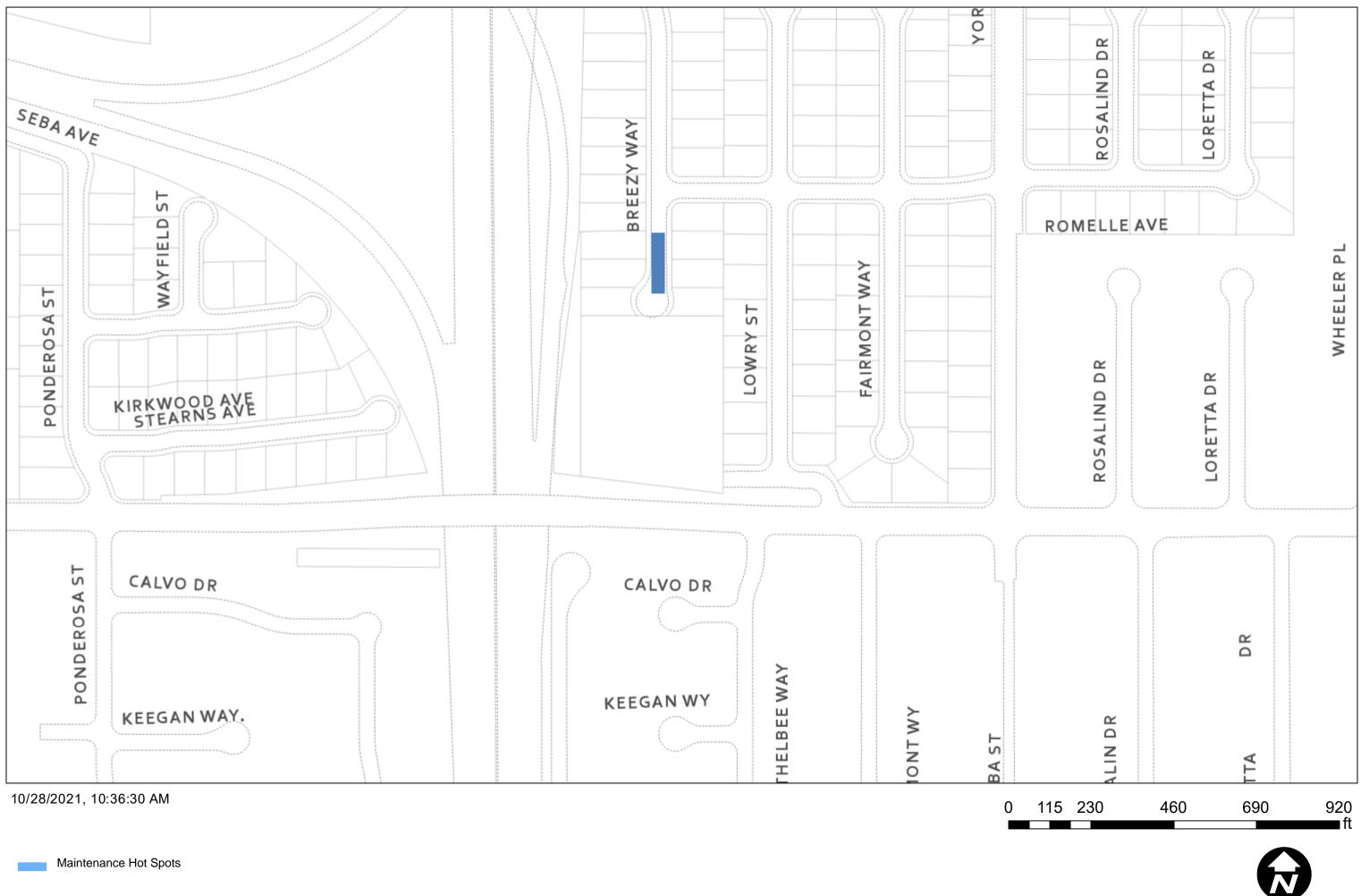
NOT TO SCALE

# **Location Map**





Location Map



NOT TO SCALE

# Meads



NOT TO SCALE

**Crater Lake** 



NOT TO SCALE

# Greenway





# Agenda Item

**City Council** 

Item #: 3.1	5. 11/9/2021	File #: 21-0586					
то:	Honorable Mayor and Members of the City Council	orable Mayor and Members of the City Council					
THRU:	Thomas R. Hatch, Interim City Manager						

FROM: Gary A. Sheatz, City Attorney

## 1. SUBJECT

Claims for Damages.

## 2. SUMMARY

Twelve claims have been received and investigated by the City Attorney's Office and/or the Risk Manager with the involved departments.

## 3. RECOMMENDED ACTION

Deny the following claims and refer to City Attorney and Claims Adjuster:

- 1. AAA a/s/o Kristyn Vonrotz
- 2. Jose A. Perez
- 3. Perry Rodriguez
- 4. Tomasa Cuevas Trujillo
- 5. Maria De Jesus Baez
- 6. Marcos Quinones
- 7. SoCal Gas
- 8. Michele Arico
- 9. Estate of Aden Uriostegui
- 10. Kathleen Uriostegui
- 11. Servando Uriostegui
- 12. Roberto J. Reyes

# 4. FISCAL IMPACT

None.

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

a: Expend fiscal resources responsibly.

# 6. DISCUSSION AND BACKGROUND

- 1. Claim for damages from AAA a/s/o Kristyn Vonrotz alleging property damage and personal injury due to a traffic collision with a CR&R street sweeper.
- 2. Claim for damages from Jose A. Perez alleging property damage when a City tree branch fell on Claimant's vehicle.

Item #: 3.15.

- 3. Claim for damages from Perry Rodriguez alleging property damage when a City tree branch fell on Claimant's vehicle.
- 4. Claim for damages from Tomasa Cuevas Trujillo alleging property damage to Claimant's driveway and front lawn due to City tree roots.
- 5. Claim for damages from Maria De Jesus Baez alleging personal injury when Claimant fell into a pothole at Irvine Regional Park.
- 6. Claim for damages from Marcos Quinones alleging personal injury and property damage when Claimant was involved in a traffic collision due to nonfunctional traffic signals operated by Caltrans.
- 7. Claim for damages from SoCal Gas alleging property damage to a plastic main due to City maintenance work.
- 8. Claim for damages from Michele Arico alleging property damage to Claimant's driveway due to City tree roots.
- 9. Claim for damages from the Estate of Aden Uriostegui alleging dangerous condition of public property.
- 10. Claim for damages from Kathleen Uriostegui alleging dangerous condition of public property.
- 11. Claim for damages from Servando Uriostegui alleging dangerous condition of public property.
- 12. Claim for reimbursement of water charges from Roberto J. Reyes.

# 7. ATTACHMENTS

None



# Agenda Item

**City Council** 

ltem #: 3.1	5. 11/9/2021	File #: 21-0586
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	

FROM: Gary A. Sheatz, City Attorney

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- 8. Michele Arico
- 9. Estate of Aden Uriostegui
- 10. Kathleen Uriostegui
- 11. Servando Uriostegui
- 12. Roberto J. Reyes

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None.

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- 1. Claim for damages from AAA a/s/o Kristyn Vonrotz alleging property damage and personal injury due to a traffic collision with a CR&R street sweeper.
- 2. Claim for damages from Jose A. Perez alleging property damage when a City tree branch fell on Claimant's vehicle.

Item #: 3.15.

- 3. Claim for damages from Perry Rodriguez alleging property damage when a City tree branch fell on Claimant's vehicle.
- 4. Claim for damages from Tomasa Cuevas Trujillo alleging property damage to Claimant's driveway and front lawn due to City tree roots.
- 5. Claim for damages from Maria De Jesus Baez alleging personal injury when Claimant fell into a pothole at Irvine Regional Park.
- 6. Claim for damages from Marcos Quinones alleging personal injury and property damage when Claimant was involved in a traffic collision due to nonfunctional traffic signals operated by Caltrans.
- 7. Claim for damages from SoCal Gas alleging property damage to a plastic main due to City maintenance work.
- 8. Claim for damages from Michele Arico alleging property damage to Claimant's driveway due to City tree roots.
- 9. Claim for damages from the Estate of Aden Uriostegui alleging dangerous condition of public property.
- 10. Claim for damages from Kathleen Uriostegui alleging dangerous condition of public property.
- 11. Claim for damages from Servando Uriostegui alleging dangerous condition of public property.
- 12. Claim for reimbursement of water charges from Roberto J. Reyes.

# 7. ATTACHMENTS

None



# Agenda Item

**City Council** 

Item #: 3	.16. 11/9/2021	File #: 21-0571
TO:	Honorable Mayor and Members of the City Counc	il
THRU:	Thomas R. Hatch, Interim City Manager	

FROM: Christopher Cash, Public Works Director

## 1. SUBJECT

Award of Contract to Calpromax Engineering, Inc. for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022; Bid No. 21-22.09.

## 2. SUMMARY

Bids for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022 (SP-4157) were received and opened on October 28, 2021. Two bidders responded to the Notice Inviting Bids. The apparent low bidder is Calpromax Engineering, Inc. of Placentia, CA for \$121,000.

## 3. **RECOMMENDED ACTION**

- 1. Authorize the appropriation of \$34,800 from Traffic Improvement-Measure M2 (263) unreserved fund balance to expenditure account number 263.5011.56330.30162, Citywide Bus Stop Enhancements at Various Locations, Fiscal Year 2021-2022.
- 2. Award the contract to Calpromax Engineering, Inc. of Placentia, California in the total amount of \$133,100, representing an original amount of \$121,000, plus a 10% contingency of \$12,100, for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022; and authorize the Mayor and City Clerk to execute on behalf of the City.

## 4. FISCAL IMPACT

The total expenditure for this contract, including the 10% contingency, is \$133,100 and will be funded in Citywide Bus Stop Enhancements at Various Locations, Fiscal Year 2021-2022 (30162) through:

Reimbursable Capital Projects (550)	\$ 98,300
Measure M2 (263)	34,800
Total	\$133,100

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations

## 6. DISCUSSION AND BACKGROUND

The Citywide Bus Stop Enhancements at Various Locations, Fiscal Year 2021-2022 (FY22) will

provide bus stop enhancements at five existing bus stop locations in the City of Orange. The improvements include the installation of five new bus shelters, benches, and trash receptacles. These locations include:

- Westbound Chapman Avenue at The City Drive
- Eastbound Chapman Avenue at The City Drive
- Westbound Chapman Avenue at Main Street
- Dock 2 at Orange Transportation Center
- Northbound The City Drive at Justice Center Way

Project improvements will be installed per the American with Disabilities Act Accessibility Guidelines (ADAAG) requirements.

The City has pursued and obtained funding from the Orange County Transportation Authority (OCTA) under the M2 Project W Safe Transit Stops program in order to fund the various improvements provided by the project. The City has entered into an agreement with OCTA for 90% reimbursement for the construction of this project up to the amount of \$98,300.

The City Council previously approved an advertisement for bids on October 13, 2021. The bid solicitation was advertised on October 14, 2021 for a period of two weeks and bids were opened on October 28, 2021. Two bids were received as follows:

1. Calpromax Engineering, Inc, Placentia\$121,0002. Zoran Construction Group, Inc, Rancho Santa Fe\$121,816

The low bid is about 23% higher than the Engineer's Estimate. This may be due to the long manufacturing lead times for metal fabrication and procurement, in addition to the loss of economy of scale. Staff checked the references and qualifications for Calpromax Engineering, Inc. and found them to be acceptable, with adequate years of experience in completing contracts of similar nature to this project. Therefore, staff recommends that Calpromax Engineering, Inc. be awarded the contract in the total amount of \$133,100, representing an original amount of \$121,000, plus a 10% contingency of \$12,100 for the Bus Stop Enhancement at Various Locations, FY22 project.

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA guidelines Section 15301 "Existing Facilities" Class 1. The CEQA Notice of Exemption has been recorded with the County Recorder's Office.

Construction is scheduled to begin in March 2022 due to long manufacturing lead times and is expected to be completed within 30 calendar days.

## 7. ATTACHMENTS

- Bid Abstract
- Contract with Calpromax Engineering, Inc.



# Agenda Item

**City Council** 

Item #: 3	.16. 11/9/2021	File #: 21-0571
TO:	Honorable Mayor and Members of the City Counc	il
THRU:	Thomas R. Hatch, Interim City Manager	

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## 7. ATTACHMENTS

- Bid Abstract
- Contract with Calpromax Engineering, Inc.

Annual Sewer Line Replacement/ Maintenance FY 2018-19							1		2	
Bid No. 21-22.09; Project No. SP-4157 Date of Bid Opening: 10/28/2021										
				ENGINEER'S ESTIMATE		Calpromax Engineering, Inc.		Zoran Construction Group, Inc.		
							Tel. No.	(714) 573-4599	Tel. No.	(858) 746-4600
NO.	DESCRIPTION OF WORK	QUANTITY			UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
an W we Re	Irnish and Install Bus Shelter, Benches, Id Trash Receptacle at the Existing Sestbound Chapman Avenue Bus Stop est of The City Drive. Includes Plocation of Existing Bus Sign, Post, and Irniture per Plan	1	LS	\$	18,100.00	\$18,100.00	\$30,000.00	\$30,000.00	\$22,433.00	\$22,433.00
an Ea	rnish and Install Bus Shelter, Benches, ad Trash Receptacle at the Existing istbound Chapman Avenue Bus Stop ist of The City Drive.	1	LS	\$	22,000.00	\$22,000.00	\$25,000.00	\$25,000.00	\$27,324.00	\$27,324.00
an Ste	rnish and Install Bus Shelter, Benches, ad Trash Receptacle at the Existing Bus op at Dock 2 Orange Transportation enter.	1	LS	\$	22,000.00	\$22,000.00	\$23,000.00	\$23,000.00	\$21,851.00	\$21,851.00
an W	rnish and Install Bus Shelter, Benches, ad Trash Receptacle at the Existing estbound Chapman Avenue Bus Stop est of Main Street.	1	LS	\$	18,100.00	\$18,100.00	\$20,000.00	\$20,000.00	\$24,635.00	\$24,635.00
an No	rnish and Install Bus Shelter, Benches, ad Trash Receptacle at the Existing orthbound The City Drive Bus Stop orth of Justice Center Way.	1	LS	\$	18,100.00	\$18,100.00	\$23,000.00	\$23,000.00	\$25,573.00	\$25,573.00
Grand Total					\$98,300.00		\$121,000.00		\$121,816.00	

### CONTRACT [Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022 (Bid No. 21-22.09, SP-4157)]

**THIS CONTRACT** (the "Contract") is made and entered into as of \_\_\_\_\_\_, 2021 ("Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and CALPROMAX ENGINEERING, INC. ("Contractor"), who agree as follows.

#### ARTICLE 1 Work Performed

**a.** For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City, and under the conditions expressed in the two (2) bonds presented to City with this Contract and incorporated herein by this reference, Contractor hereby agrees to and shall do all the work and furnish all the labor, materials, tools and equipment, except such as are mentioned in the specifications to be furnished by City to Contractor, necessary to complete in good workmanship and substantial manner the work (the "Work") described in:

(1) The Construction Plans for Bus Stop Enhancement at Various Locations, Fiscal Year 2021-2022 (Drawing SP-4157) prepared for City by Martin Varona, approved by the "Engineer" (as defined herein below) on October 8<sup>th</sup>, 2021, and consisting of sheets numbered 1 through 5, inclusive (the "Plans");

(2) The latest edition of the "City of Orange Standard Plans and Specifications" (the "Orange Book") with the term "Engineer," as used in the Orange Book and in this Contract, to specifically include the City Engineer (or his/her designee);

(3) The "Standard Specifications for Public Works Construction" (the "Greenbook"), and all amendments thereto, except the definition of "Subcontractor" in Section 1.2 (General – Terms and Definitions) of Part 1 (General Provisions) of the Greenbook, which is hereby amended in its entirety to read as follows: "Subcontractor – An individual, firm, or corporation having a direct contract with the Contractor for the performance of a part of the Work;"

(4) The "City of Orange Standard Special Provisions;"

(5) The Standard Plans; and

(6) Contractor's Bid Proposal, which is on file with City's Department of Public Works.

**b.** Contractor acknowledges that it has received the Plans from City and that a complete copy of the Plans are in its possession and are hereby specifically referred to and by such reference made a part hereof. The Orange Book, Greenbook and City of Orange Standard Special Provisions and Standard Plans are on file with City's Public Works Director and are hereby specifically referred to and by such reference made a part hereof. Contractor hereby acknowledges

that it has read, reviewed and understands the Plans, the Orange Book, the Greenbook, the Special Provisions, the Standard Plans, and the Encroachment Permit as they relate to the Work, all of which documents shall be referred to herein collectively as the "Plans and Specifications."

**c.** Contractor acknowledges the provisions of Chapter 8.28 of the Orange Municipal Code which requires, among other things, that Contractor utilize City's exclusive solid waste hauler for the rental of bins for trash and debris removal and imposes mandatory recycling requirements for self-hauled construction and demolition waste. The terms and conditions set forth in this Contract shall control over any terms and conditions in the Plans and Specifications to the contrary.

**d.** The Work shall be performed in conformity with the Plans and Specifications and the Bid Proposal and all applicable laws, including any and all applicable federal and state labor laws and standards and applicable prevailing wage requirements and any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment.

e. Unless and until otherwise notified in writing by City's Public Works Director, City's Principal Engineer, Randy Nguyen ("Authorized City Representative"), shall be the person to whom Contractor will report for the performance of the Work hereunder. It is understood that Contractor's performance hereunder shall be under the direction and supervision of the Authorized City Representative or such other person as City's Public Works Director may designate from time to time, that Contractor shall coordinate the Work hereunder with the Authorized City Representative to the extent required by the Authorized City Representative, and that all performances required hereunder by Contractor shall be performed to the satisfaction of the Authorized City Representative or City's Public Works Director.

**f.** It is expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and Contractor's Bid Proposal, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said Bid Proposal conflicting herewith.

### ARTICLE 2 Commencement of Work

Contractor shall commence the Work provided for in this Contract within ten (10) days of the date of the issuance by City of a Notice to Proceed and diligently prosecute completion of the Work within thirty (30) calendar days from such date, unless legal extension is granted in accordance with the terms set forth in the Greenbook. Time is of the essence in this Contract. Contractor shall do all things necessary and incidental to the prosecution of Contractor's Work.

### ARTICLE 3 Compensation

**a.** Contractor agrees to receive and accept an amount not to exceed ONE HUNDRED TWENTY-ONE THOUSAND DOLLARS and 00/100 (\$121,000) unless said amount is amended

by Contract Change Order approved by the City, as compensation for furnishing all materials and doing all the Work contemplated and embraced in this Contract. Said compensation covers (1) all loss or damage arising out of the nature of the Work, from the acts of the elements; (2) any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by City, other than as provided below; (3) all risks of every description connected with the Work; (4) all expenses incurred by or in consequence of the suspension or discontinuance of the Work; and (5) well and faithfully completing the Work, and for the whole thereof, in the manner and according to the Plans and Specifications, and requirements of the Authorized City Representative under them. Retention amounts shall be withheld from progress payments as required by law unless Contractor provides securities in lieu of retention.

In addition to the scheduled Work to be performed by the Contractor, the parties b. recognize that additional, unforeseen work and services may be required by the Authorized City Representative. In anticipation of such contingencies, the sum of TWELVE HOUSAND ONE HUNDRED DOLLARS and 00/100 (\$12,100) has been added to the total compensation of this Contract. The Authorized City Representative may approve the additional work and the actual costs incurred by the Contractor in performance of additional work or services in accordance with such amount as the Authorized City Representative and the Contractor may agree upon in advance. Said additional work or services and the amount of compensation therefor, up to the amount of the authorized contingency, shall be memorialized in the form of a Contract Amendment approved by the City Manager on a form acceptable to the City Attorney. The Contractor agrees to perform only that work or those services that are specifically requested by the Authorized City Representative. Any and all additional work and services performed under this Contract shall be completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care in accordance with a cost estimate or proposal submitted to and approved by the Authorized City Representative prior to the commencement of such Work or services.

**c.** The total amount of compensation under this Contract, including contingencies, shall not exceed ONE HUNDRED THIRTY-THREE THOUSAND ONE HUNDRED DOLLARS and 00/100 (\$133,100).

#### ARTICLE 4 Licenses

Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the Work contemplated by this Contract and that Contractor and subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Contract.

#### ARTICLE 5 Guarantees

**a.** Contractor guarantees the construction and installation of all Work included in the Plans and Specifications for which Contractor has been awarded this Contract.

**b.** Should any of the materials or equipment installed pursuant to this Contract prove defective or should the Work as a whole prove defective, due to faulty equipment, workmanship, materials furnished or methods of installations, or should said Work or any part thereof fail to function properly, as designed, due to any of the above causes within twelve (12) months after the date on which said Work is accepted by City, Contractor shall make repairs and furnish such materials and equipment as are necessary to be furnished and installed within fifteen (15) calendar days after the receipt of a demand from City.

**c.** Said Work will be deemed defective within the meaning of this guarantee in the event that it fails to function as originally intended either by the Plans and Specifications of this Contract or by the manufacturer(s) of the equipment incorporated into the Work.

**d.** In the event repairs are not made within fifteen (15) calendar days after Contractor's receipt of a demand from City, City shall have the unqualified option to make any needed repairs or replacements itself or by any other contractor. Contractor shall reimburse City, upon demand, for all expenses incurred in restoring said Work to the condition contemplated in this Contract, including the cost of any equipment or materials replaced.

e. It is understood that emergency repairs may, by necessity, be made by City. Therefore, when defective equipment, materials or workmanship result in emergency repairs by City, Contractor shall reimburse City, upon demand, for all expenses incurred. Emergency repairs will be deemed as those repairs determined by City's Director of Public Works to be necessary due to an immediate detriment to the health, safety, welfare or convenience of the residents of City.

### ARTICLE 6 Water Quality

**a.** The Santa Ana Regional Water Quality Control Board ("RWQCB") has issued National Pollutant Discharge Elimination System ("NPDES") Permit No. R8-2009-0030 (the "Permit"), which governs storm water and non-storm water discharges resulting from municipal activities performed by City or its contractors. In order to comply with the Permit requirements, the County of Orange has prepared a Drainage Area Management Plan ("DAMP"), containing Model Maintenance Procedures with Best Management Practices ("BMPs") that City and its contractors must adhere to. The Model Maintenance Procedures contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, storm water runoff, and receiving water quality. Examples include: wash water from cleaning of sidewalks or parking lots must be collected and disposed of in the sewer or landscaped areas.

**b.** The Permit, the DAMP and the Model Maintenance Procedures are on file in the office of City's Director of Public Works. Contractor hereby acknowledges that it has read, reviewed and understands the Permit, the DAMP and the Model Maintenance Procedures, as they relate to the Work and hereby shall perform the Work in conformance therewith.

## **ARTICLE 7**

#### **Independent Contractor; Contractor not Agent**

At all times during the term of this Contract, Contractor shall be an independent a. contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Contract. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Contract. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

**b.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind City to any obligation whatsoever.

### ARTICLE 8 Public Work; Prevailing Wage

**a.** The Work which is the subject of this Contract is a "public work," as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid. To the extent Contractor's employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that Contractor, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations (<u>www.dir.ca.gov/DLSR</u>). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

**b.** Attached hereto as <u>Attachment No. 1</u> and incorporated herein by this reference is a copy of the provisions of Sections 1725.5, 1771, 1771.1, 1771.4, 1775, 1776, 1777.5, 1813 and 1815 of the California Labor Code. Contractor hereby acknowledges that it has read, reviewed and understands those provisions of the Labor Code and shall prosecute and complete the Work under this Contract in strict compliance with all of those terms and provisions.

**c.** Contractor shall secure the payment of compensation to its employees in accordance with the provisions of Section 3700 of the California Labor Code. Accordingly, and as required by Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

**d.** Contractor shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which result or arise in any way from the noncompliance by Contractor of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages). It is agreed by the parties that, in connection with the construction of the Work which is the subject of this Contract, Contractor shall bear all risks of payment or non-payment of state prevailing wages. "Increased costs" as used in this paragraph shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Contract.

### **ARTICLE 9** Equal Employment Opportunity

During the performance of this Contract, Contractor agrees as follows:

**a.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

**b.** Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

**c.** Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any Work covered by this Contract, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

#### ARTICLE 10 Conflicts of Interest

Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a contractor to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code. Contractor further agrees that it shall not be eligible to work as the builder for any project for which the design work is part of this Contract.

#### ARTICLE 11 Indemnity

Contractor shall defend, indemnify and hold harmless City and its officers, officials, agents, and employees from and against:

**a.** Any and all claims, liabilities, losses, damages, penalties, costs or expenses (including reasonable attorneys' fees and court costs) which City may directly or indirectly sustain or suffer arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur on or adjacent to the real property which is the subject of this Contract, or in connection with performance of this Contract which may be directly or indirectly caused by the acts or omissions of Contractor or its officers, employees, contractors or agents, or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance. Contractor shall not be responsible for (and such indemnity shall not apply to) any willful misconduct, negligence or breach of this Contract by City or its officers, officials, agents, and employees. The foregoing indemnity shall survive termination of this Contract.

**b.** Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or its subcontractor's employees arising out of Contractor's Work under this Contract, including any and all claims under any law pertaining to Contractor's status as an independent contractor.

#### ARTICLE 12 Insurance

**a.** Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder and the results of that Work by Contractor, its agents, representatives, employees or subcontractors. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth below shall be maintained for the duration of the Contract.

**b.** Contractor shall maintain the following minimum amount of insurance: the greater of either the limits set forth in (1) through (4), below; or all of the insurance coverage and/or limits carried by or available to Contractor.

(1) General Liability \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If

			Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
(2) Automobile	Liability \$1		per accident for bodily injury and property damage.
(3) Workers' C	ompensation		as required by the State of California.
(4) Employer's	Liability \$1	1,000,000	per accident for bodily injury or disease.

**c.** Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor under this Contract.

**d.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its officers, officials, agents and employees; or Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**e.** Each policy of general liability and automotive liability insurance shall contain, or be endorsed to contain, the following provisions:

(1) City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor (any auto), and with respect to liability arising out of Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such Work or operations. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 12.b, above, shall apply to City as an additional insured.

(2) For any claims related to this Contract, Contractor's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents and employees shall be excess of Contractor's insurance and shall not contribute with it.

(3) Coverage shall not be canceled, except after thirty (30) days' prior written notice has been provided to City.

**f.** Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Article 12. The endorsements shall be on forms acceptable to City. All certificates and endorsements are to be received and approved by City before the Work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

**g.** All insurance procured and maintained by Contractor shall be issued by insurers admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide.

**h.** Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Contract unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom by way of set-off from any sums owed Contractor.

i. Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all Work performed by Contractor, its employees, agents and subcontractors. Contractor shall obtain any other endorsement that may be necessary to effect this waiver of subrogation.

**j.** Contractor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.

#### ARTICLE 13 Termination

City, acting through its City Manager or his/her designee, reserves the right to terminate this Contract for any reason by giving five (5) days' written notice of intent to terminate to Contractor. Upon receipt of notice, Contractor shall immediately cease work, unless the notice provides otherwise. Should City terminate this Contract, City shall pay Contractor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Contract, unless such termination shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

#### ARTICLE 14 Maintenance and Inspection of Records

In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting

records and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Contract. During the term of this Contract and for a period of three (3) years after termination or completion of this Contract, City shall have the right to inspect and/or audit Contractor's records pertaining to the performance of this Contract at Contractor's office. Contractor shall make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

#### ARTICLE 15 Compliance with Laws

**a.** Contractor shall be knowledgeable of and comply with all local, state and federal laws pertaining to the subject matter hereof or in any way regulating the activities undertaken by Contractor or any subcontractor hereunder.

**b.** Contractor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Contract comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Contract who is ineligible to work in the United States or under the terms of this Contract; and

(3) Has properly maintained, and shall at all times during the term of this Contract properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and

(4) Has responded, and shall at all times during the term of this Contract respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

**c.** Contractor shall require all subcontractors and/or subconsultants to make the same representations and warranties required by this Article 15 when hired to perform services under this Contract.

**d.** Contractor shall, upon request of City, provide a list of all employees working under this Contract and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Contract without written notice to City, accompanied by the verification required herein for such employees. Contractor shall require all subcontractors and/or sub-consultants to make the same verification when hired to perform services under this Contract.

**e.** If Contractor, or a subcontractor or subconsultant, knowingly employs an employee providing Work under this Contract who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee, such shall constitute a material breach of this Contract and may be cause for immediate termination of this Contract by City.

**f.** Contractor shall indemnify and hold City, its officials and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures, City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Contract.

#### ARTICLE 16 Governing Law and Venue

This Contract shall be construed in accordance with and governed by the laws of the State of California and Contractor shall submit to the jurisdiction of California courts. Venue for any dispute arising under this Contract shall be in Orange County, California.

### ARTICLE 17 Integration and Amendment

**a.** This Contract constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the Work to be performed under this Contract shall be of any force or effect unless it is in writing and signed by both parties. Any Work performed which is inconsistent with or in violation of the provisions of this Contract shall not be compensated.

**b.** Amendments to this Contract must be in writing and signed by both parties. The City Manager is authorized to execute amendments to this Contract up to the amounts specified in Chapter 3.08 of the Orange Municipal Code.

#### ARTICLE 18 Notice

Except as otherwise provided herein, all notices required under this Contract shall be in writing and delivered personally, by e-mail, or by first class mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

"CONTRACTOR"

Calpromax Engineering, Inc. 650 N. Rose Drive #186 Placentia, CA 92870 "CITY"

City of Orange 300 E. Chapman Avenue Orange, CA 92866-1591 Attn: Maria Armogeda

Telephone: 714-573-4599 E-Mail: info@calpromaxinc.com Attn: Randy Nguyen

Telephone: 714-744-5531 E-Mail: rnguyen@cityoforange.org

#### ARTICLE 19 Claim Resolution

City and Contractor agree that the claim resolution process applicable to any claim by Contractor in connection with the Work provided herein shall be subject to the procedures set forth in California Public Contract Code Section 9204, attached hereto as <u>Attachment No. 2</u>, and incorporated herein by this reference.

#### ARTICLE 20 Counterparts

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

#### [Remainder of page intentionally left blank; signatures on next page]

#### "CITY"

CITY OF ORANGE, a municipal corporation

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

Mark A. Murphy Mayor of the City of Orange

### CONTRACT, BONDS AND INSURANCE APPROVED BY:

ATTEST:

Mary E. Binning Senior Assistant City Attorney Pamela Coleman, City Clerk

### "CONTRACTOR"

CALPROMAX ENGINEERING, INC. a California Corporation

[Note: Signature of Chairman of the **Board**, President or Vice President is required]

By:\_\_\_\_\_
Printed Name:\_\_\_\_\_ Title:

[Note: Signature of Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer is also required]

By:\_\_\_\_\_
Printed Name:\_\_\_\_\_ Title:

### **ATTACHMENT NO. 1**

### CALIFORNIA LABOR CODE SECTIONS 1725.5, 1771, 1771.1, 1771.4, 1775, 1776, 1777.5, 1813 and 1815

# Section 1725.5. Registration of contractors; mandatory registration; qualifications and application; fees; exempt contractors

A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1)(A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

## Section 1771. Payment of general prevailing rate

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

# Section 1771.1. Registration as a contractor or subcontractor required prior to bid submission; exceptions; violations; penalties

(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100)

for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractors on the public work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(1) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

## Section 1771.4. Additional requirements when bidding and awarding public works contracts

(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

### Section 1775. Penalties for violations

(a)(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor

or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

# Section 1776. Payroll records; retention; inspection; redacted information; agencies entitled to receive nonredacted copies of certified records; noncompliance penalties; rules

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

# Section 1777.5. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions; compliance program

(a)(1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

(2) For purposes of this chapter, "apprenticeship program" means a program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(b)(1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written

apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator

of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(1) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2)(A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The grant funds shall be distributed as follows:

(i) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(ii) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship and preapprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

### Section 1813. Forfeiture for violations; contract stipulation; report of violations

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty- five dollars (\$25) for each worker employed in the execution of

the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

## Section 1815. Overtime

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than  $1\frac{1}{2}$  times the basic rate of pay.

## **ATTACHMENT NO. 2**

## CALIFORNIA PUBLIC CONTRACT CODE SECTION 9204

Section 9204. Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process (Eff: January 1, 2017)

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.



City Council

ltem #: 3.1	7. 1	1/9/2021	File #: 21-0610	
TO:	Honorable Mayor and Members	s of the City Council		

THRU: Thomas R. Hatch, Interim City Manager

FROM: Christopher Cash, Public Works Director

# 1. SUBJECT

Award of Contract to CT&T Concrete Paving, Inc. for Community Development Block Grant Americans with Disabilities Act Wheelchair Access Ramps at Various Locations Project Fiscal Year 2021-2022; Bid No. 21-22.07.

# 2. SUMMARY

Bids for Community Development Block Grant Americans with Disabilities Act Wheelchair Access Ramps at Various Locations Project Fiscal Year 2021-2022 were received and opened on October 21, 2021. Six bidders responded to the Notice Inviting Bids. The apparent low bidder is CT&T Concrete Paving, Inc. of Pomona, CA for \$94,700.

# 3. **RECOMMENDED ACTION**

- 1. Authorize the transfer of \$70,000 from 310.9645.57130.11070 CDBG Contingency to 310.9645.56330.11328 FY22 CDBG American with Disabilities Act Improvements Access Ramps.
- 2. Authorize the amendment of Memorandum of Understanding (AGR-6648.D) to increase the proposed project's funding by \$70,000, from \$68,430 to \$138,430; amend the Project Description to reflect the revised project scope; and authorize the City Manager to execute the amendment.
- 3. Award the contract to CT&T Concrete Paving, Inc. in the total amount of \$104,170, representing an original bid amount of \$94,700, plus a 10% contingency of \$9,470, for Community Development Block Grant Americans with Disabilities Act Wheelchair Access Ramps at Various Locations Project Fiscal Year 2021-2022; and authorize the Mayor and City Clerk to execute on behalf of the City.

# 4. FISCAL IMPACT

The total expenditure for this contract is \$104,170 and will be funded in ADA Improvements - Access Ramps (11328) through Community Development Block Grant (310).

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

This project will provide for the construction of approximately 18 Americans with Disabilities Act (ADA) wheelchair access ramps at various locations citywide. As part of this project, detectable warning surfaces (truncated domes) will be installed per the American with Disabilities Act Accessibility Guidelines (ADAAG) requirements.

The City Council previously approved an advertisement for bids on September 14, 2021. The bid solicitation was advertised on September 23, 2021 for a period of four weeks and bids were opened on October 21, 2021. Six bids were received as follows:

1. CT&T Concrete Paving, Inc., Pomona	\$ 94,700
2. S&H Civilworks, Colton	\$105,200
3. Onyx Paving Company, Inc., Anaheim	\$111,000
4. Kormex Construction, Inc., Ontario	\$116,250
5. Vido Samarzich, Inc., Rancho Cucamonga	\$122,350
6. Cheloletty Engineering, Villa Park	\$137,000

The City receives Community Development Block Grant (CDBG) funding from the U.S. Department of Housing and Urban Development for activities that primarily benefit Low and Moderate Income residents. The funding source requires that a certain percentage of the work be awarded to Disadvantaged Business Enterprises (DBE). The bidder is required to submit the Construction Contract DBE Commitment form showing how they will meet the project DBE goal, or submit the DBE information Good Faith Effort (GFE) form, documenting that adequate good faith efforts were made. Upon review of the bid received from the apparent low bidder, CT&T Concrete Paving, Inc., has provided documentation showing its GFE and will provide a DBE of 3.6%.

The low bid received is 16.2% lower than the Engineer's Estimate. Staff checked the references and qualifications for CT&T Concrete Paving, Inc. and found them to be acceptable, with adequate years of experience in completing contracts of similar nature to this project. Therefore, staff recommends that CT&T Concrete Paving, Inc. be awarded the contract in the total amount of \$104,170, representing an original amount of \$94,700, plus a 10% contingency of \$9,470, for the CDBG Americans with Disabilities Act Wheelchair Access Ramps at Various Locations project.

The available budget is \$68,430; therefore, staff is requesting a transfer of funds from the CDBG Contingency Account for awarding the contract and for construction engineering expenses. The funds are available in the account as follows:

	FY 2021-22 Action Plan Approved by CC on May 11, 2021 (11328)	funds from Contingency	November 9, 2021 Adjusted Appropriation Approved by CC
FY 22 ADA Improvements at Various Locations	\$68,430	\$70,000	\$138,430
Total	\$68,430	\$70,000	\$138,430

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA guidelines Section 15301 "Existing Facilities" Class 1. The CEQA

Notice of Exemption has been recorded with the County Recorder's Office. The proposed project is also categorically excluded from the provisions of the National Environmental Policy Act (NEPA) under 24 CFR Section 58.35. Documentation of this determination is on file.

Construction is scheduled to begin in December, 2021 and expected to be completed within 30 calendar days.

# 7. ATTACHMENTS

- Bid Abstract
- Contract with CT&T Concrete Paving, Inc.
- Location Maps



City Council

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THRU: Thomas R. Hatch, Interim City Manager

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Notice of Exemption has been recorded with the County Recorder's Office. The proposed project is also categorically excluded from the provisions of the National Environmental Policy Act (NEPA) under 24 CFR Section 58.35. Documentation of this determination is on file.

Construction is scheduled to begin in December, 2021 and expected to be completed within 30 calendar days.

# 7. ATTACHMENTS

- Bid Abstract
- Contract with CT&T Concrete Paving, Inc.
- Location Maps

	CDBG FY 21-22 ADA Access Ramp Replacement at Various Locations					1		2		3		4		5		6	
	Bid No. 21-22.07; Project No. SP-4177 Date of Bid Opening: 10/21/2021					CT&T Concrete Paving, Inc.		S&H Civilworks		Onyx Paving Co., Inc. Korm		Kormex Construction Inc.		Vido Samarzich. Inc.		Cheloletty Engineering	
			ENGINEER'S	ESTIMATE	Pon	ete Paving, Inc. nona (909) 629-8000	Co	vitworks lton (909) 206-1181	Ana	ng Co., Inc. heim (714) 632-6699	Ont		Rancho Co		Villa		
NC	D. DESCRIPTION OF WORK	QUANTITY		UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
AD	A Curb Ramp Replacement																
1	Sawcut, Remove and Replace Sidewalk Access Ramp Per City Standard Plan 121, inclusive of Tactile (All Types)	19	EA	\$ 5,000.00	\$95,000.00	\$4,500.00	\$85,500.00	\$4,800.00	\$91,200.00	\$5,100.00	\$96,900.00	\$5,000.00	\$95,000.00	\$5,800.00	\$110,200.00	\$6,273.68	\$119,200.00
2	Sawcut, Remove and Replace Existing Sidewalk Per City Standard Plan No 118 & 120	50	SF	\$ 20.00	\$1,000.00	\$12.00	\$600.00	\$50.00	\$2,500.00	\$15.00	\$750.00	\$25.00	\$1,250.00	\$13.00	\$650.00	\$20.00	\$1,000.00
3	Sawcut, Remove and Replace Existing Curb and Gutter Per City Standard Plan No. 117	50	LF	\$ 100.00	\$5,000.00	\$70.00	\$3,500.00	\$50.00	\$2,500.00	\$87.00	\$4,350.00	\$100.00	\$5,000.00	\$80.00	\$4,000.00	\$115.00	\$5,750.00
4	Sawcut, Remove and Replace Existing Concrete Cross Gutter/and or Spandrel per City Standard Plan No. 119	150	SF	\$ 40.00	\$6,000.00	\$25.00	\$3,750.00	\$50.00	\$7,500.00	\$30.00	\$4,500.00	\$50.00	\$7,500.00	\$20.00	\$3,000.00	\$27.00	\$4,050.00
5	Remove and Replace Traffic Signal or Street light Pull Box and Adjust Conduit per Caltrans Standard ES-8A	3	EA	\$ 2,000.00	\$6,000.00	\$450.00	\$1,350.00	\$500.00	\$1,500.00	\$1,500.00	\$4,500.00	\$2,500.00	\$7,500.00	\$1,500.00	\$4,500.00	\$2,333.33	\$7,000.00
Gra	Grand Total				\$113,000.00		\$94,700.00		\$105,200.00		\$111,000.00		\$116,250.00		\$122,350.00		\$137,000.00

#### CONTRACT [Community Development Block Grant (CDBG) FY 2021-2022 – Americans with Disabilities Act (ADA) Wheelchair Access Ramp Replacement at Various Locations (Bid No. 21-22.07, SP-4177)]

**THIS CONTRACT** (the "Contract") is made and entered into as of \_\_\_\_\_\_, 2021 ("Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and CT&T CONCRETE PAVING, INC., a California corporation ("Contractor"), who agree as follows.

#### ARTICLE 1 Work Performed

**a.** For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City, and under the conditions expressed in the two (2) bonds presented to City with this Contract and incorporated herein by this reference, Contractor hereby agrees to and shall do all the work and furnish all the labor, materials, tools and equipment, except such as are mentioned in the specifications to be furnished by City to Contractor, necessary to complete in good workmanship and substantial manner the work (the "Work") described in:

(1) CDBG FY 2021-2022 – ADA Wheelchair Access Ramp Replacement at Various Locations (Drawing SP-4177) prepared for City by Chris Mielke, approved by the "Engineer" (as defined below) on September 21, 2021, and consisting of sheets numbered 1 through 2 inclusive (the "Plans");

(2) The latest edition of the "City of Orange Standard Plans and Specifications" (the "Orange Book") with the term "Engineer," as used in the Orange Book and in this Contract, to specifically include the City Engineer (or his/her designee);

(3) The "Standard Specifications for Public Works Construction" (the "Greenbook"), and all amendments thereto, except the definition of "Subcontractor" in Section 1.2 (General – Terms and Definitions) of Part 1 (General Provisions) of the Greenbook, which is hereby amended in its entirety to read as follows: "Subcontractor – An individual, firm, or corporation having a direct contract with the Contractor for the performance of a part of the Work;"

(4) The Compliance Documents attached hereto as <u>Attachment No. 3</u> and incorporated herein by this reference;

(5) The Labor Relations Forms attached hereto as <u>Attachment No. 4</u> and incorporated here by this reference;

(6) The "City of Orange Standard Special Provisions;"

(7) The Standard Plans

(8) The Federal Special Provisions attached hereto as <u>Attachment No. 5</u> and incorporated herein by this reference;

(9) The Federal Labor Standards and Provisions attached hereto as <u>Attachment No. 6</u> and incorporated herein by this reference;

(10) The Federal Prevailing Wage Rates attached hereto as <u>Attachment No. 7</u> and incorporated herein by this reference; and

(11) Contractor's Bid Proposal, which is on file with City's Department of Public Works.

**b.** Contractor acknowledges that it has received the Plans from City and that a complete copy of the Plans are in its possession and are hereby specifically referred to and by such reference made a part hereof. The Orange Book, Greenbook and City of Orange Standard Special Provisions and Standard Plans are on file with City's Public Works Director and are hereby specifically referred to and by such reference made a part hereof. Contractor hereby acknowledges that it has read, reviewed and understands the Plans, the Orange Book, the Greenbook, the Special Provisions, the Standard Plans, and the Encroachment Permit as they relate to the Work, all of which documents shall be referred to herein collectively as the "Plans and Specifications."

**c.** Contractor acknowledges the provisions of Chapter 8.28 of the Orange Municipal Code which requires, among other things, that Contractor utilize City's exclusive solid waste hauler for the rental of bins for trash and debris removal and imposes mandatory recycling requirements for self-hauled construction and demolition waste. The terms and conditions set forth in this Contract shall control over any terms and conditions in the Plans and Specifications to the contrary.

**d.** The Work shall be performed in conformity with the Plans and Specifications and the Bid Proposal and all applicable laws, including any and all applicable federal and state labor laws and standards and applicable prevailing wage requirements and any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment.

e. Unless and until otherwise notified in writing by City's Public Works Director, City's Principal Engineer, Randy Nguyen ("Authorized City Representative"), shall be the person to whom Contractor will report for the performance of the Work hereunder. It is understood that Contractor's performance hereunder shall be under the direction and supervision of the Authorized City Representative or such other person as City's Public Works Director may designate from time to time, that Contractor shall coordinate the Work hereunder with the Authorized City Representative to the extent required by the Authorized City Representative, and that all performances required hereunder by Contractor shall be performed to the satisfaction of the Authorized City Representative or City's Public Works Director.

**f.** It is expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and Contractor's Bid Proposal, then this instrument

shall control and nothing herein shall be considered as an acceptance of the said terms of said Bid Proposal conflicting herewith.

#### ARTICLE 2 Commencement of Work

Contractor shall commence the Work provided for in this Contract within ten (10) days of the date of the issuance by City of a Notice to Proceed and diligently prosecute completion of the Work within thirty (30) calendar days from such date, unless legal extension is granted in accordance with the terms set forth in the Greenbook. Time is of the essence in this Contract. Contractor shall do all things necessary and incidental to the prosecution of Contractor's Work.

#### ARTICLE 3 Compensation

**a.** Contractor agrees to receive and accept an amount not to exceed NINETY-FOUR THOUSAND SEVEN HUNDRED DOLLARS and 00/100 (\$94,700.00) unless said amount is amended by Contract Change Order approved by the City, as compensation for furnishing all materials and doing all the Work contemplated and embraced in this Contract. Said compensation covers (1) all loss or damage arising out of the nature of the Work, from the acts of the elements; (2) any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by City, other than as provided below; (3) all risks of every description connected with the Work; (4) all expenses incurred by or in consequence of the suspension or discontinuance of the Work; and (5) well and faithfully completing the Work, and for the whole thereof, in the manner and according to the Plans and Specifications, and requirements of the Authorized City Representative under them. Retention amounts shall be withheld from progress payments as required by law unless Contractor provides securities in lieu of retention.

In addition to the scheduled Work to be performed by the Contractor, the parties b. recognize that additional, unforeseen work and services may be required by the Authorized City Representative. In anticipation of such contingencies, the sum of NINE THOUSAND FOUR HUNDRED SEVENTY DOLLARS and 00/100 (\$9,470.00) has been added to the total compensation of this Contract. The Authorized City Representative may approve the additional work and the actual costs incurred by the Contractor in performance of additional work or services in accordance with such amount as the Authorized City Representative and the Contractor may agree upon in advance. Said additional work or services and the amount of compensation therefor, up to the amount of the authorized contingency, shall be memorialized in the form of a Contract Amendment approved by the City Manager on a form acceptable to the City Attorney. The Contractor agrees to perform only that work or those services that are specifically requested by the Authorized City Representative. Any and all additional work and services performed under this Contract shall be completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care in accordance with a cost estimate or proposal submitted to and approved by the Authorized City Representative prior to the commencement of such Work or services.

**c.** The total amount of compensation under this Contract, including contingencies, shall not exceed ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY DOLLARS and 00/100 (\$104,170.00).

## ARTICLE 4 Licenses

Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the Work contemplated by this Contract and that Contractor and subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Contract.

## ARTICLE 5 Guarantees

**a.** Contractor guarantees the construction and installation of all Work included in the Plans and Specifications for which Contractor has been awarded this Contract.

**b.** Should any of the materials or equipment installed pursuant to this Contract prove defective or should the Work as a whole prove defective, due to faulty equipment, workmanship, materials furnished or methods of installations, or should said Work or any part thereof fail to function properly, as designed, due to any of the above causes within twelve (12) months after the date on which said Work is accepted by City, Contractor shall make repairs and furnish such materials and equipment as are necessary to be furnished and installed within fifteen (15) calendar days after the receipt of a demand from City.

**c.** Said Work will be deemed defective within the meaning of this guarantee in the event that it fails to function as originally intended either by the Plans and Specifications of this Contract or by the manufacturer(s) of the equipment incorporated into the Work.

**d.** In the event repairs are not made within fifteen (15) calendar days after Contractor's receipt of a demand from City, City shall have the unqualified option to make any needed repairs or replacements itself or by any other contractor. Contractor shall reimburse City, upon demand, for all expenses incurred in restoring said Work to the condition contemplated in this Contract, including the cost of any equipment or materials replaced.

**e.** It is understood that emergency repairs may, by necessity, be made by City. Therefore, when defective equipment, materials or workmanship result in emergency repairs by City, Contractor shall reimburse City, upon demand, for all expenses incurred. Emergency repairs will be deemed as those repairs determined by City's Director of Public Works to be necessary due to an immediate detriment to the health, safety, welfare or convenience of the residents of City.

#### ARTICLE 6 Water Quality

**a.** The Santa Ana Regional Water Quality Control Board ("RWQCB") has issued National Pollutant Discharge Elimination System ("NPDES") Permit No. R8-2009-0030 (the

"Permit"), which governs storm water and non-storm water discharges resulting from municipal activities performed by City or its contractors. In order to comply with the Permit requirements, the County of Orange has prepared a Drainage Area Management Plan ("DAMP"), containing Model Maintenance Procedures with Best Management Practices ("BMPs") that City and its contractors must adhere to. The Model Maintenance Procedures contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, storm water runoff, and receiving water quality. Examples include: wash water from cleaning of sidewalks or parking lots must be collected and disposed of in the sewer or landscaped areas.

**b.** The Permit, the DAMP and the Model Maintenance Procedures are on file in the office of City's Director of Public Works. Contractor hereby acknowledges that it has read, reviewed and understands the Permit, the DAMP and the Model Maintenance Procedures, as they relate to the Work and hereby shall perform the Work in conformance therewith.

## ARTICLE 7 Independent Contractor; Contractor not Agent

At all times during the term of this Contract, Contractor shall be an independent a. contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Contract. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Contract. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

**b.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind City to any obligation whatsoever.

### ARTICLE 8 Public Work; Prevailing Wage

**a.** The Work which is the subject of this Contract is a "public work," as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid. To the extent Contractor's employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that Contractor, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The

general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations (<u>www.dir.ca.gov/DLSR</u>). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

**b.** Attached hereto as <u>Attachment No. 1</u> and incorporated herein by this reference is a copy of the provisions of Sections 1725.5, 1771, 1771.1, 1771.4, 1775, 1776, 1777.5, 1813 and 1815 of the California Labor Code. Contractor hereby acknowledges that it has read, reviewed and understands those provisions of the Labor Code and shall prosecute and complete the Work under this Contract in strict compliance with all of those terms and provisions.

**c.** Contractor shall secure the payment of compensation to its employees in accordance with the provisions of Section 3700 of the California Labor Code. Accordingly, and as required by Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

**d.** Contractor shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which result or arise in any way from the noncompliance by Contractor of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages). It is agreed by the parties that, in connection with the construction of the Work which is the subject of this Contract, Contractor shall bear all risks of payment or non-payment of state prevailing wages. "Increased costs" as used in this paragraph shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Contract.

#### **ARTICLE 9** Equal Employment Opportunity

During the performance of this Contract, Contractor agrees as follows:

**a.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms

of compensation and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

**b.** Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

**c.** Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any Work covered by this Contract, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

## ARTICLE 10 Conflicts of Interest

Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a contractor to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code. Contractor further agrees that it shall not be eligible to work as the builder for any project for which the design work is part of this Contract.

## ARTICLE 11 Indemnity

Contractor shall defend, indemnify and hold harmless City and its officers, officials, agents, and employees from and against:

**a.** Any and all claims, liabilities, losses, damages, penalties, costs or expenses (including reasonable attorneys' fees and court costs) which City may directly or indirectly sustain or suffer arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur on or adjacent to the real property which is the subject of this Contract, or in connection with performance of this Contract which may be directly or indirectly caused by the acts or omissions of Contractor or its officers, employees, contractors or agents, or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance. Contractor shall not be responsible for (and such indemnity shall not apply to) any willful misconduct, negligence or breach of this Contract by City or its officers, officials, agents, and employees. The foregoing indemnity shall survive termination of this Contract.

**b.** Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or its subcontractor's employees arising out of Contractor's Work under this Contract, including any and all claims under any law pertaining to Contractor's status as an independent contractor.

#### ARTICLE 12 Insurance

**a.** Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder and the results of that Work by Contractor, its agents, representatives, employees or subcontractors. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth below shall be maintained for the duration of the Contract.

**b.** Contractor shall maintain the following minimum amount of insurance: the greater of either the limits set forth in (1) through (4), below; or all of the insurance coverage and/or limits carried by or available to Contractor.

(1)	General Liability	\$2,000,000	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
(2)	Automobile Liability	\$1,000,000	per accident for bodily injury and property damage.
(3)	Workers' Compensation		as required by the State of California.
(4)	Employer's Liability	\$1,000,000	per accident for bodily injury or disease.

**c.** Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor under this Contract.

**d.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its officers, officials, agents and employees; or Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**e.** Each policy of general liability and automotive liability insurance shall contain, or be endorsed to contain, the following provisions:

(1) City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor (any auto), and with respect to liability arising out of Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such Work or operations. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 12.b, above, shall apply to City as an additional insured.

(2) For any claims related to this Contract, Contractor's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents and employees shall be excess of Contractor's insurance and shall not contribute with it.

(3) Coverage shall not be canceled, except after thirty (30) days' prior written notice has been provided to City.

**f.** Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Article 12. The endorsements shall be on forms acceptable to City. All certificates and endorsements are to be received and approved by City before the Work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

**g.** All insurance procured and maintained by Contractor shall be issued by insurers admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide.

**h.** Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Contract unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom by way of set-off from any sums owed Contractor.

i. Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all Work performed by Contractor, its employees, agents and subcontractors. Contractor shall obtain any other endorsement that may be necessary to effect this waiver of subrogation.

**j.** Contractor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.

#### ARTICLE 13 Termination

City, acting through its City Manager or his/her designee, reserves the right to terminate this Contract for any reason by giving five (5) days' written notice of intent to terminate to Contractor. Upon receipt of notice, Contractor shall immediately cease work, unless the notice provides otherwise. Should City terminate this Contract, City shall pay Contractor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Contract, unless such termination shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

### **ARTICLE 14** Maintenance and Inspection of Records

In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting records and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Contract. During the term of this Contract and for a period of three (3) years after termination or completion of this Contract, City shall have the right to inspect and/or audit Contractor's records pertaining to the performance of this Contract at Contractor's office. Contractor shall make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

#### ARTICLE 15 Compliance with Laws

**a.** Contractor shall be knowledgeable of and comply with all local, state and federal laws pertaining to the subject matter hereof or in any way regulating the activities undertaken by Contractor or any subcontractor hereunder.

**b.** Contractor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Contract comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Contract who is ineligible to work in the United States or under the terms of this Contract; and

(3) Has properly maintained, and shall at all times during the term of this Contract properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor's employees; and

(4) Has responded, and shall at all times during the term of this Contract respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

**c.** Contractor shall require all subcontractors and/or subconsultants to make the same representations and warranties required by this Article 15 when hired to perform services under this Contract.

**d.** Contractor shall, upon request of City, provide a list of all employees working under this Contract and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Contract without written notice to City, accompanied by the verification required herein for such employees. Contractor shall require all subcontractors and/or sub-consultants to make the same verification when hired to perform services under this Contract.

e. If Contractor, or a subcontractor or subconsultant, knowingly employs an employee providing Work under this Contract who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee, such shall constitute a material breach of this Contract and may be cause for immediate termination of this Contract by City.

**f.** Contractor shall indemnify and hold City, its officials and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures, City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Contract.

#### ARTICLE 16 Governing Law and Venue

This Contract shall be construed in accordance with and governed by the laws of the State of California and Contractor shall submit to the jurisdiction of California courts. Venue for any dispute arising under this Contract shall be in Orange County, California.

## ARTICLE 17 Integration and Amendment

**a.** This Contract constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the Work to be performed under this Contract shall be of any force or effect unless it is in writing and signed by both parties. Any Work performed which is inconsistent with or in violation of the provisions of this Contract shall not be compensated.

**b.** Amendments to this Contract must be in writing and signed by both parties. The City Manager is authorized to execute amendments to this Contract up to the amounts specified in Chapter 3.08 of the Orange Municipal Code.

#### ARTICLE 18 Notice

Except as otherwise provided herein, all notices required under this Contract shall be in writing and delivered personally, by e-mail, or by first class mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

"CONTRACTOR"

#### "CITY"

CT&T Concrete Paving, Inc.	City of Orange
1054 E. Third Street	300 E. Chapman Avenue
Pomona, CA 91766	Orange, CA 92866-1591
Attn: Jose Carvajal	Attn: Randy Nguyen
Telephone: 909-629-8000	Telephone: 714-744-5531
E-Mail: jose.cttinc@gmail.com	E-Mail: rnguyen@cityoforange.org

#### ARTICLE 19 Claim Resolution

City and Contractor agree that the claim resolution process applicable to any claim by Contractor in connection with the Work provided herein shall be subject to the procedures set forth in California Public Contract Code Section 9204, attached hereto as <u>Attachment No. 2</u>, and incorporated herein by this reference.

#### ARTICLE 20 Counterparts

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

#### [Remainder of page intentionally left blank; signatures on next page]

#### "CITY"

CITY OF ORANGE, a municipal corporation

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

Mark A. Murphy Mayor of the City of Orange

CONTRACT, BOND(S) AND INSURANCE APPROVED BY:

ATTEST:

Mary E. Binning Senior Assistant City Attorney Pamela Coleman, City Clerk

#### "CONTRACTOR"

CT&T CONCRETE PAVING, INC., a California corporation

[<u>Note</u>: Signature of Chairman of the Board, President or Vice President is required] By:\_\_\_\_\_ Printed Name:\_\_\_\_\_ Title:\_\_\_\_\_

[<u>Note</u>: Signature of Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer is also required] By:\_\_\_\_\_ Printed Name:\_\_\_\_\_\_ Title:\_\_\_\_\_

## ATTACHMENT NO. 1

## CALIFORNIA LABOR CODE SECTIONS 1725.5, 1771, 1771.1, 1771.4, 1775, 1776, 1777.5, 1813 and 1815

# Section 1725.5. Registration of contractors; mandatory registration; qualifications and application; fees; exempt contractors

A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1)(A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

## Section 1771. Payment of general prevailing rate

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

# Section 1771.1. Registration as a contractor or subcontractor required prior to bid submission; exceptions; violations; penalties

(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100)

for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractors on the public work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(1) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

## Section 1771.4. Additional requirements when bidding and awarding public works contracts

(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

## Section 1775. Penalties for violations

(a)(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor

or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

# Section 1776. Payroll records; retention; inspection; redacted information; agencies entitled to receive nonredacted copies of certified records; noncompliance penalties; rules

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

# Section 1777.5. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions; compliance program

(a)(1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

(2) For purposes of this chapter, "apprenticeship program" means a program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(b)(1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written

apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator

of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(1) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2)(A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The grant funds shall be distributed as follows:

(i) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(ii) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship and preapprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

#### Section 1813. Forfeiture for violations; contract stipulation; report of violations

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty- five dollars (\$25) for each worker employed in the execution of

the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

#### Section 1815. Overtime

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than  $1\frac{1}{2}$  times the basic rate of pay.

#### **ATTACHMENT NO. 2**

### CALIFORNIA PUBLIC CONTRACT CODE SECTION 9204

Section 9204. Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process (Eff: January 1, 2017)

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

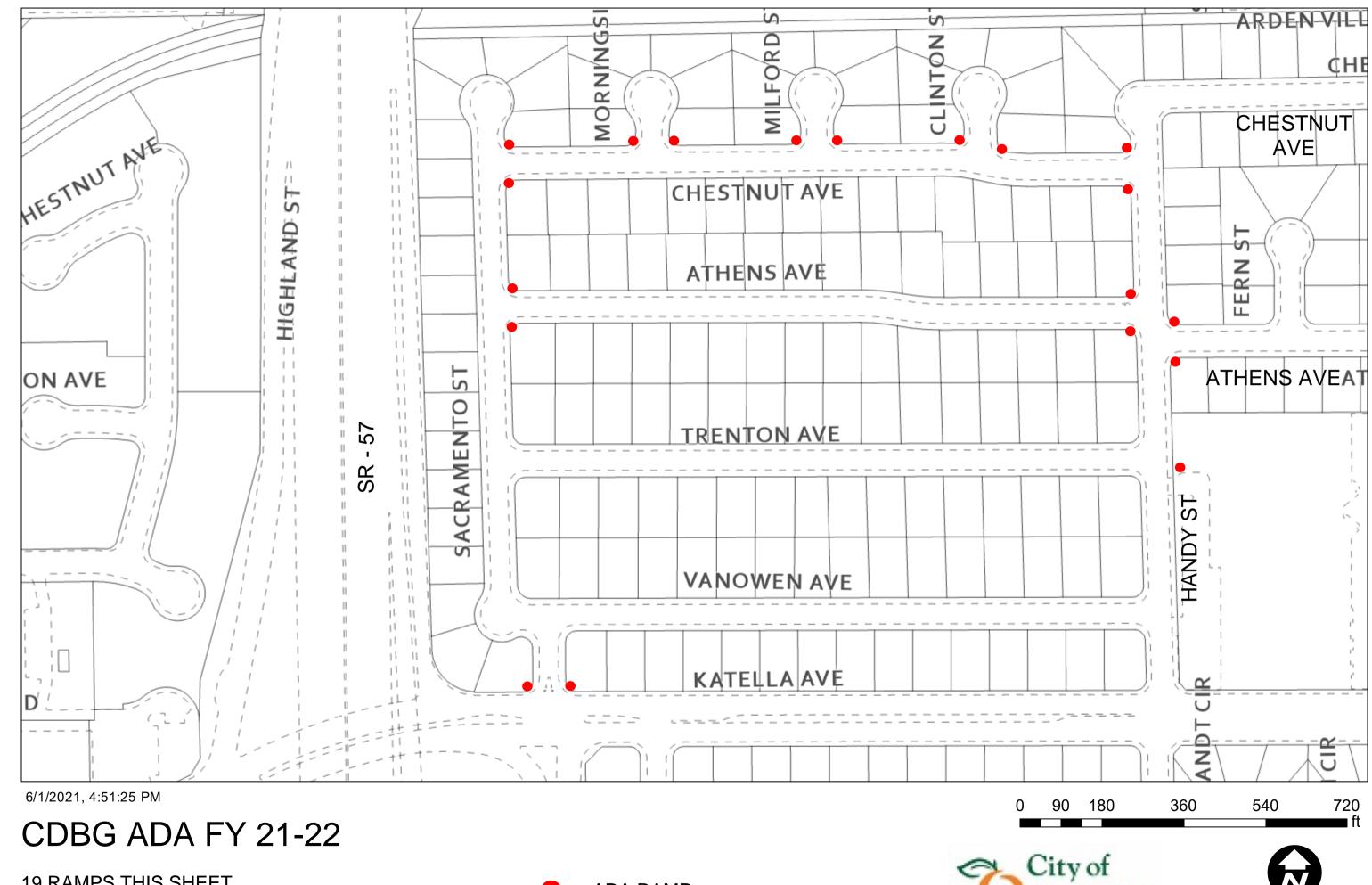
(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

## **Location Map**



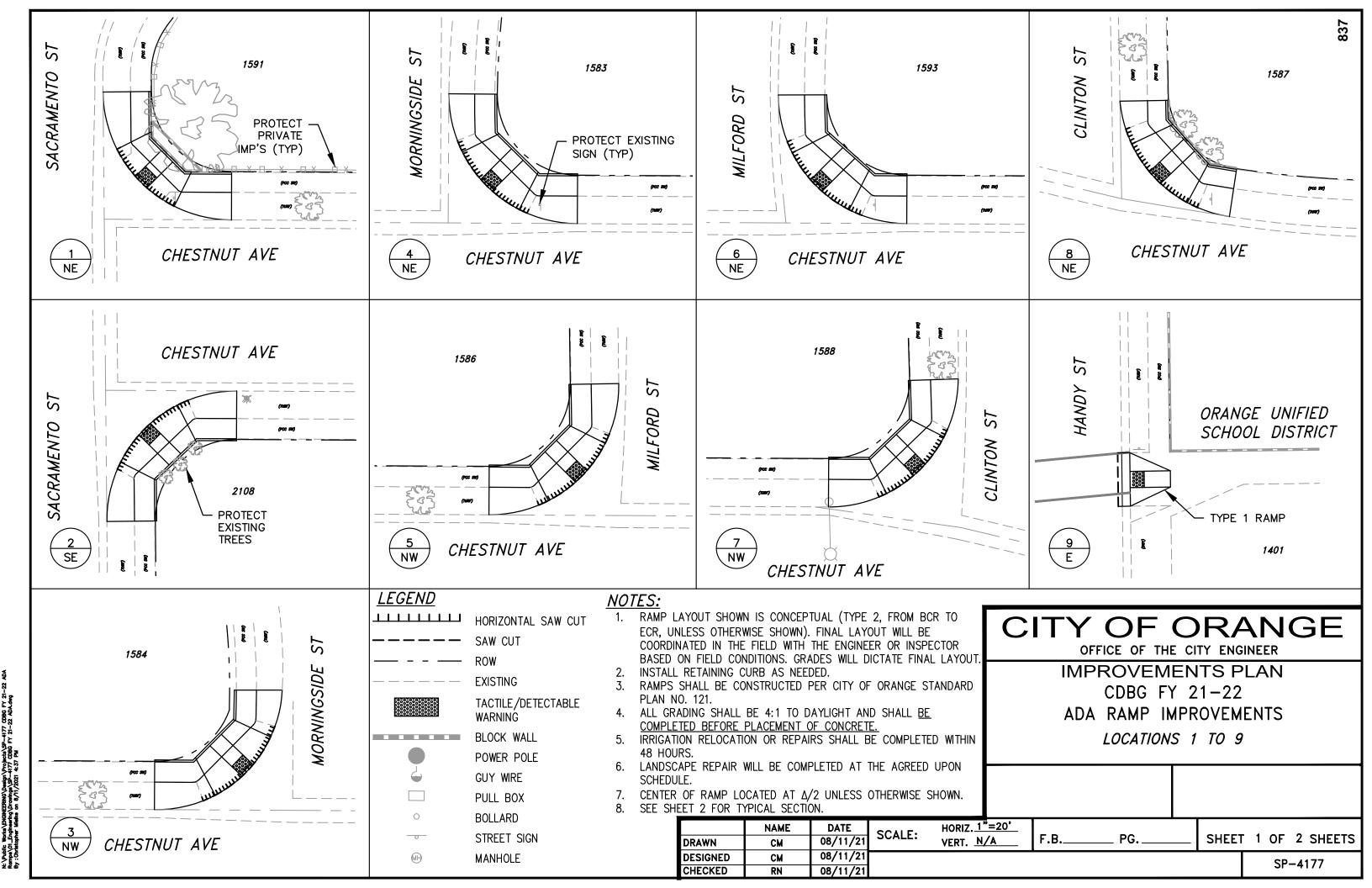


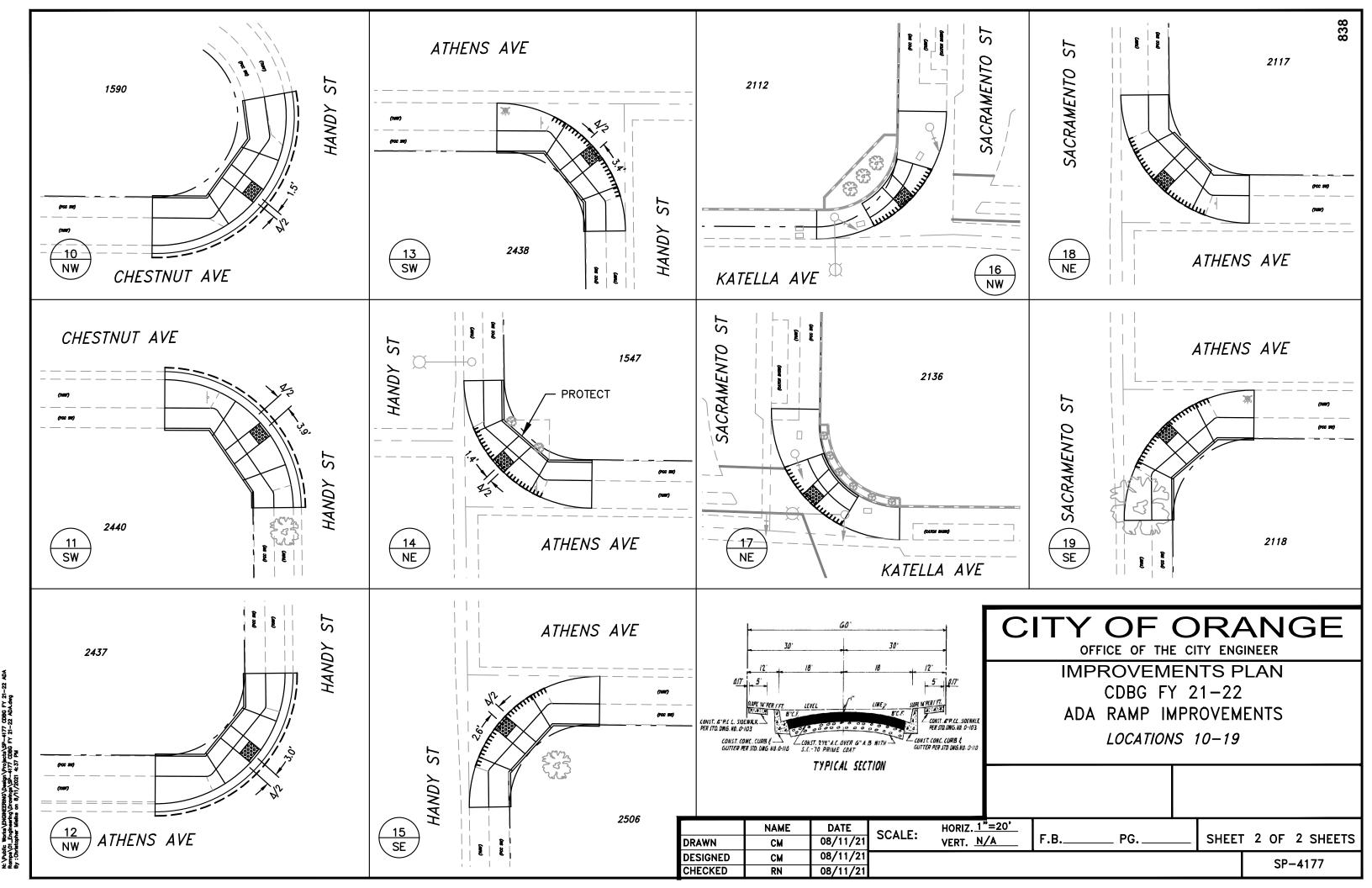
**19 RAMPS THIS SHEET** 





NOT TO SCALE







# Agenda Item

**City Council** 

ltem #: 3.18. 11/9/2021		<b>File #:</b> 21-0601	
то:	Honorable Mayor and Members of the	City Council	
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Works Direc	tor	

## 1. SUBJECT

First Amendment to Contract with Diversified Thermal Services, Inc. for preventive maintenance for heating ventilation and air conditioning equipment at various City buildings, Bid No. 189-19 (SP-4076).

## 2. SUMMARY

The City currently has an agreement with Diversified Thermal Services, Inc. for mechanical services and preventive maintenance for ventilation and air conditioning equipment at various city buildings for an amount not to exceed \$460,630. The amount of the original agreement will soon be expended with required preventative maintenance work and emergency repairs. The proposed First Amendment will increase the agreement amount by \$150,000 for a total amount not to exceed \$610,630.

## 3. **RECOMMENDED ACTION**

Approve the First Amendment to Contract with Diversified Thermal Services, Inc. for \$150,000; and authorize the Mayor and City Clerk to execute on behalf of the City.

## 4. FISCAL IMPACT

The total expenditure for this amendment is \$150,000 and will be funded through General Fund (100) and Major Building Improvements (725).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

## 6. DISCUSSION AND BACKGROUND

The provisions of this contract allow for proper maintenance of heating, ventilation, and air conditioning (HVAC) at City facilities and parks. In addition, the contract allows for HVAC equipment to be replaced on an as-needed basis. Due to the nature of aging infrastructure and equipment, Diversified Thermal Services, Inc. made many repairs under the contract. Highlighted below are the most significant emergency repairs and technology upgrades to HVAC in City facilities and parks.

#### Item #: 3.18.

facilities since February 2019:

- Repair and replace various parts such as air heating boiler, sensors, motors, variable frequency drive (VFD), worn wiring in the air chiller, and other fan motors at Police Headquarters (\$68,937).
- Replace 5-ton split system in IT Server Room at City Hall (\$13,984)
- Replace two 3-ton package units at the Water Plant (\$14,863) and a heater in Fleet Garage (\$4,275).
- Repair and replace various parts such as blower motor, blower wheel, capacitor, drain line, and wiring at Fire Stations 1 and 8 (\$5,000).
- Remove and replace two 3-ton HVAC split systems and a one-ton mini-split unit at Killefer Park and Grijalva Park (\$33,425).
- Upgrade Enteliweb graphics to Hypertext Markup Language (HTML) due to Adobe Flash discontinuation of support Flash Player after December 31, 2020 (\$41,984).

Staff recommends approval of the First Amendment to the Agreement, increasing the contract by \$150,000 for a total amount not to exceed \$610,630, to allow for the maintenance of the HVAC system city-wide through June 2022.

### 7. ATTACHMENT

• First Amendment to Contract



# Agenda Item

City Council

ltem #: 3.18. 11/9/2021		File #: 21-0601
то:	Honorable Mayor and Members of the City Counci	il
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

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### 7. ATTACHMENT

• First Amendment to Contract

### FIRST AMENDMENT TO CONTRACT

#### [Mechanical Services and Preventive Maintenance for HVAC Equipment (Informal Bid No. 189-19; SP-4076]

**THIS FIRST AMENDMENT TO CONTRACT** (the "First Amendment to Contract") is made and entered into as of \_\_\_\_\_\_, 2021 ("Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and DIVERSIFIED THERMAL SERVICES, INC., a California corporation ("Contractor"), with reference to the following:

A. City and Contractor entered into a Contract (Agreement No. AGR-6497.A) dated February 12, 2019, which is incorporated herein by this reference (the "Original Contract"); and

B. City and Contractor desire to modify, amend and supplement certain portions of the Original Contract by increasing the compensation.

NOW, THEREFORE, the parties hereby agree as follows:

Section 1. Defined Terms. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Contract.

<u>Section 2.</u> <u>Cross-References.</u> City and Contractor agree that all references in this First Amendment are deemed and construed to refer to the Original Contract, as implemented by this First Amendment.

<u>Section 3.</u> <u>Compensation</u>. Article 3 of the Original Contract is hereby amended to increase the total not-to-exceed compensation for the services to be rendered during the Initial Term by ONE HUNDRED FIFTY THOUSAND DOLLARS and 00/100 (\$150,000.00) and Article 3 is hereby amended in its entirety to read as follows:

"Under the Initial Term, Contractor agrees to receive and accept an amount not to exceed SIX HUNDRED TEN THOUSAND SIX HUNDRED THIRTY DOLLARS and 00/100 (\$610,630.00) as full compensation for furnishing all materials and doing all the Work contemplated and embraced in this Contract. Said compensation covers (1) all loss or damage arising out of the nature of the Work or from the acts of the elements; (2) any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by City, other than as provided below; (3) all risks of every description connected with the Work; (4) all expenses incurred by or in consequence of the suspension or discontinuance of the Work; and (5) well and faithfully completing the Work, and for the whole thereof, in the manner and according to the Plans and Specifications, and requirements of the Authorized City Representative under them."

Integration. This First Amendment amends, as set forth herein, the Section 4. Original Contract and, except as specifically amended hereby, the Original Contract shall remain in full force and effect. To the extent that there is any conflict or inconsistency between the terms and provisions of this First Amendment and the terms and provisions of the Original Contract, the terms and provisions of this First Amendment shall control and govern the rights and obligations of the parties.

IN WITNESS hereof, the parties enter into this Contract on the year and day first above written.

**"CONTRACTOR"** 

"CITY"

DIVERSIFIED THERMAL SERVICES, INC., a California corporation

CITY OF ORANGE, a municipal corporation

ATTEST:

By: <u>Mark A. Murphy, Mayor</u>

\*By: Printed Name: Title:

*By:	
Printed Name:	
Title:	

Pamela Coleman, City Clerk

**APPROVED AS TO FORM:** 

Mary E. Binning Senior Assistant City Attorney

- \*NOTE: If CONTRACTOR is a corporation, the City requires the following signature(s): (1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR
  - The corporate officer named in a corporate resolution as authorized to enter into -this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to the City.



# Agenda Item

**City Council** 

Item #: 3	.19. 11/9/2021	File #: 21-0627
то:	onorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	

FROM: Pamela Coleman, City Clerk

## 1. SUBJECT

Second Reading and adoption of an Ordinance of the City Council of the City of Orange deleting Chapter 7.02 of the Orange Municipal Code (the Water Conservation and Water Supply Shortage Program) and adopting new Chapter 7.02 (the Water Shortage Contingency Response ordinance). Ordinance No. 16-21.

## 2. SUMMARY

The Introduction and First Reading of the above-entitled Ordinance was approved at an Adjourned Regular Council Meeting on October 13, 2021.

The Ordinance is now presented for Second Reading by title only, and adoption.

Vote at First Reading: AYES:

Nichols, Monaco, Barrios, Tavoularis, Gutierrez, Murphy Dumitru None

## 3. RECOMMENDED ACTION

NOES: ABSENT:

Adopt Ordinance No. 16-21.

## 4. ATTACHMENTS

• Ordinance No. 16-21



# Agenda Item

**City Council** 

Item #: 3	.19. 11/9/2021	File #: 21-0627
то:	onorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	

FROM: Pamela Coleman, City Clerk

#### 1. SUBJECT

Second Reading and adoption of an Ordinance of the City Council of the City of Orange deleting Chapter 7.02 of the Orange Municipal Code (the Water Conservation and Water Supply Shortage Program) and adopting new Chapter 7.02 (the Water Shortage Contingency Response ordinance). Ordinance No. 16-21.

#### 2. SUMMARY

The Introduction and First Reading of the above-entitled Ordinance was approved at an Adjourned Regular Council Meeting on October 13, 2021.

The Ordinance is now presented for Second Reading by title only, and adoption.

Vote at First Reading: AYES:

Nichols, Monaco, Barrios, Tavoularis, Gutierrez, Murphy Dumitru ABSENT: None

#### 3. **RECOMMENDED ACTION**

NOES:

Adopt Ordinance No. 16-21.

#### 4. ATTACHMENTS

Ordinance No. 16-21

#### **ORDINANCE NO. 16-21**

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE DELETING CHAPTER 7.02 OF THE ORANGE MUNICIPAL CODE (THE WATER CONSERVATION AND WATER SUPPLY SHORTAGE PROGRAM) AND ADOPTING NEW CHAPTER 7.02 (THE WATER SHORTAGE CONTINGENCY RESPONSE ORDINANCE)

**WHEREAS,** a reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of the southern California region; and

WHEREAS, California, including Orange County, experienced significant dry year conditions in 2012-2017, which led local water agencies to declare water shortage conditions that triggered drought actions; and

WHEREAS, following the end of the drought, the California Legislature modified the Urban Water Management Planning Act in 2018 to include additional water shortage planning requirements. The California Water Code has significant updates, specifically to Water Code Section 10632, that now mandate new elements to Urban Water Management and Water Shortage Contingency Plans, including an annual drought risk assessment, State Water Shortage Levels and statewide water use prohibitions; and

WHEREAS, the Municipal Water District of Orange County ("MWDOC") has adopted a 2020 Urban Water Management Plan that includes water conservation as a necessary and effective component of the MWDOC programs to provide a reliable supply of water to meet the needs of MWDOC's 28 member agencies, including the City of Orange ("City"). The MWDOC Urban Water Management Plan also includes a chapter contingency analysis of actions to be taken in response to water supply shortages. This Ordinance is consistent with the MWDOC Urban Water Management Plan and Water Shortage Contingency Plan; and

WHEREAS, the imported water supplies in the City and at MWDOC are subject to the Water Shortage Allocations determined by the Metropolitan Water District of Southern California ("Metropolitan"). Subsequently, when triggered, MWDOC as a wholesaler of Metropolitan's supplies will be required to curtail deliveries of imported water based on the MWDOC Water Shortage Allocation Plan, which from time to time in the future is expected to be activated when in a state of shortage; and

WHEREAS, beginning July 1 2021, both MWDOC and the City are required to prepare an Annual Water Supply and Demand Assessment and Drought Risk Assessment as part of their Urban Water Management Plan for submission to the California Department of Water Resources. Annually, by July 1st of each year, beginning the year following the adoption of the 2020 UWMP, MWDOC and the City are required to monitor, report and if declared a drought emergency, then notify the

Department of Water Resources, in order to comply with Water Code Section 10632.1 reporting requirements; and

WHEREAS, the City has adopted a Water Shortage Contingency Plan to establish standards and procedures to enable implementation and enforcement of local water shortage contingency measures. These measures align with the Water Code Section 353, which specifies that "when the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it shall thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection;" and

**WHEREAS,** Water Code Section 375 also requires the City to adopt a water conservation program to reduce the quantity of water used by those persons within the City's jurisdiction for the purpose of conserving the water supplies of the City; and

WHEREAS, the adoption and enforcement of a Water Shortage Contingency Plan is necessary to manage the City's potable water supply in the short and long-term to avoid or minimize the effects of drought and shortage within the City. Such program is essential to ensure a reliable and sustainable minimum supply of water for the public health, safety and welfare.

NOW, THEREFORE, the City Council of the City of Orange does ordain as follows:

#### SECTION I:

The recitals stated above are true and correct, incorporated herein, and form the basis for the adoption of this Ordinance.

#### SECTION II:

The City Council determines that the adoption of this Ordinance is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Title 14, Section 15307 of the California Code of Regulations, because it is an action taken by the City as authorized by state law, to assure the maintenance, restoration or enhancement of a natural resource, namely water, where the regulatory process involves procedures for protection of the environment.

#### SECTION III:

Chapter 7.02 of the Orange Municipal Code, "Environment – Water Conservation and Water Supply Shortage," is hereby repealed.

#### **SECTION IV:**

New Chapter 7.02 of the Orange Municipal Code, "Environment – Water Shortage Contingency Response," is hereby added to read as follows:

#### 7.02.010 Title.

This chapter will be known as the City of Orange Water Shortage Contingency Response Ordinance and is enacted under the authority of California Water Code Sectios 10630 et seq.

#### 7.02.020 Declaration of Intent and Purpose.

A. The general welfare of the residents of Orange requires that the water available to the city be utilized in a manner which maximizes beneficial use and that the waste and unreasonable use of water be prevented. The intent of this chapter is to reduce water consumption within the city through conservation and effective water supply planning, assure the reasonable and beneficial use of water, prevent waste of water, and maximize the efficient use of water within the city to avoid and minimize the effect and hardship of water shortage to the greatest extent possible.

B. This chapter:

(1) Establishes permanent water conservation requirements;

(2) Establishes six levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency; and

(3) Establishes regulations to be implemented during times of declared water shortages or declared water shortage emergencies, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies; and

(4) Gives priority to the response protocols in an adopted Hazard Mitigation Plan in the event of natural and human-caused disasters.

#### 7.02.030 Definitions.

The following words and phrases whenever used in this chapter have the meaning defined in this section:

"Billing Unit" means the unit of water used to apply water rates for purposes of calculating water charges for a person's water usage and equals one hundred (100) cubic feet or seven hundred forty-eight (748) gallons of water.

"City" means the City of Orange.

"DWR" means the California Department of Water Resources.

"Landscape Irrigation System" means an irrigation system with pipes, hoses, spray heads, or sprinkling devices that are operated by hand or through an automated system.

"Large Landscape Areas" means a lawn, landscape, or other vegetated area, or combination thereof, equal to more than one (1) acre of irrigable land.

"Person" means any natural person or persons, corporation, public or private entity, governmental agency or institution, or any other user of water provided by the city.

"Potable Water" means water which is suitable for drinking.

"Recycled Water" means the reclamation and reuse of non-potable water for beneficial use.

"Single Pass Cooling Systems" means equipment where water is circulated only once to cool equipment before being disposed.

"WSCP" means the city's adopted Water Shortage Contingency Plan.

#### 7.02.040 Application.

A. This chapter applies to any person in the use of any potable water provided by the city.

B. This chapter does not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.

C. This chapter does not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale.

D. This chapter is intended solely to further the conservation of water. It is not intended to implement any provision of federal, state, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff. Refer to the local jurisdiction or Regional Water Quality Control Board for information on any storm water ordinances and storm water management plans.

#### 7.02.050 General Prohibition.

Water customers of the city shall not use, or permit the use of water in a manner contrary to any provision of this chapter or in an amount in excess of that amount permitted by any curtailment provisions then in effect pursuant to action taken by the adoption of a resolution of the City Council in accordance with the provisions of this chapter.

## 7.02.060 Permanent Water Conservation Requirements – Prohibition Against Waste.

The following water conservation requirements are permanently effective upon adoption of this chapter. Violations of this chapter will be subject to those penalties contained herein.

A. Limits of Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 5:00 p.m. Pacific

Time on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.

B. Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per day per station. This subsection does not apply to landscape irrigation systems that exclusively use very low-flow drip type irrigation systems when no emitter produces more than two (2) gallons water per hour, and weather based controllers or stream rotor sprinklers that meet a 70 percent efficiency standard.

C. No Excessive Water Flow or Runoff: Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited

D. No Washing Down Hard or Paved Surfaces: Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except when necessary to alleviate safety or sanitary hazards, and then only by use of a hand held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device or a low-volume, high-pressure cleaning machine equipped to recycle any water used.

E. Restrictions on Vehicle Washing: Using water to wash a vehicle (including any automobile, truck, van, bus, motorcycle, boat, or trailer) is prohibited. This prohibition does not apply to washing that is performed by use of a hand-held bucket or hand-held hose equipped with a positive self-closing device or water shut-off nozzle. Additionally, this prohibition does not apply to any commercial car washing facility.

F. Recirculating Water Required in Decorative Water Features: The use of water to clean, fill, or maintain levels in decorative fountains, ponds, lakes, or other similar aesthetic structures is prohibited. This prohibition does not apply if such water is part of a recirculating system. Additionally, this prohibition does not apply to a water feature listed in the National Register of Historic Places, where water use is deemed necessary for the integrity of the feature.

G. Restrictions on Irrigation After Rainfall: The use of water to irrigate outdoor landscapes during or within forty-eight (48) hours after measurable rainfall is prohibited.

H. Restrictions on Irrigation of Turf on Medians: The irrigation with potable water of ornamental turf on public street medians is prohibited.

I. Restrictions on Irrigation of Newly Construction Building Sites: The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development is prohibited.

J. No Installation of Single Pass Cooling Systems: Installation of single pass cooling systems is prohibited in buildings requesting new water service.

K. Restrictions on Hotels, Motels and Lodging Laundry: Hotels, motels, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments shall prominently display notice of this option in each bathroom using plain language.

L. Water Conserving Dish Wash Valves Required: Food preparation establishments such as restaurants or cafes are prohibited from using non-water conserving dish wash pre-rinse spray valves.

M. Restaurant Drinking Water upon Request Only: No restaurant, hotel, cafe, cafeteria, or other public place where food is sold, served, or offered for sale shall serve drinking water to any customer unless expressly requested.

N. No Non-recirculating Water Systems in Commercial Car Wash and Laundry Systems: Installation of non-recirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems. Existing commercial conveyor car wash systems must have installed and operational recirculating water systems, or must have secured a waiver of this requirement from the city.

O. Obligation to Fix Leaks, Breaks or Malfunctions: All leaks, breaks, or other malfunctions in the water user's plumbing, irrigation, or distribution system shall be repaired immediately after such escape of water should have been discovered and corrected, and in no event more than seventy-two (72) hours after receiving a notice from the city, unless other arrangements are made with the city.

# 7.02.070 Procedures for Determination of Water Supply Shortage and Level Implementation.

A. Under California Water Code Section 10632.1, the city is required to submit a water shortage assessment report to the California Department of Water Resources by July 1 of each year.

B. The city will follow the written decision-making process defined in its WSCP to assess water supply reliability on an annual basis.

C. City staff will determine if a water shortage exists based on the water shortage criteria and stages defined in the WSCP.

D. In the event a water shortage is triggered according to the procedures and conditions defined in the WSCP, the City Council will declare a shortage according to the defined water shortage levels.

E. The public will be informed of the shortage according to the procedures and protocols for communication identified in section 7.02.080 of this chapter.

F. Sudden Catastrophic Water Supply Shortage. When the City Manager determines that a sudden event has, or threatens to, significantly diminish the reliability or quality of the city's water supply, the City Manager may declare a catastrophic water shortage and impose whatever emergency water allocation or conservation actions deemed necessary, in the City Manager's professional judgment, to protect the reliability and quality of the city's water supply, until the emergency passes or the city takes other action. Such emergency action shall be ratified by the City Council at the next scheduled City Council meeting and shall be taken in accordance with Water Code Section 350 et seq.

G. The declaration of any particular stage of water shortage level shall remain in effect until such time as the City Council declares the water shortage level over according to the procedures and conditions defined in the WSCP.

H. The city shall coordinate with surrounding water suppliers and/or the County of Orange for the possible proclamation of a local emergency, as defined in Government Code Section 8558.

#### 7.02.080 Procedures and Protocols for Communication.

Upon declaration of a water shortage, the city will inform all relevant stakeholders such as customers, the public, interested parties, and local, regional and state governments, of the effective date of the water shortage response actions associated with the relevant stage according to the communication procedures identified in the WSCP, including:

A. Any current or predicted shortages as determined by the annual water supply and demand assessment.

B. Any shortage response actions triggered or anticipated to be triggered by the annual water supply and demand assessment.

C. Any other relevant communications.

# 7.02.090 Correlation Between City Water Supply Shortage Levels and DWR Water Supply Shortage Levels.

A. Metropolitan Water District and MWDOC Water Shortage Contingency Plans follow the six standard water shortage levels corresponding to progressive ranges of up to 10, 20, 30, 40 and 50 percent shortages, and a greater-than-50-percent shortage level, as set forth in Water Code Section 10632(a)(3)(A).

B. The city's water shortage levels are aligned with the state Water Shortage Levels, as also defined in the MWDOC WSCP, and therefore comply with Water Code Section identified above.

#### 7.02.100 Levels of Declared Water Supply Shortage.

A. The City Manager is authorized to require or impose reductions in the use of water if such reductions are necessary to comply with Water Supply Shortage conditions as defined in the WSCP.

B. The shortage response actions that align with each level of Water Supply Shortage are defined in the WSCP and include, at a minimum, all of the following:

(1) Locally appropriate supply augmentation actions.

(2) Locally appropriate demand reduction actions to adequately respond to shortages.

(3) Locally appropriate operational changes.

(4) Additional, mandatory prohibitions against specific water use practices that are in addition to state- and local-mandated prohibitions and are appropriate to the local conditions.

(5) For each action, an estimate of the extent to which the gap between supplies and demand will be reduced by implementation of the action.

(6) Each elevated shortage level will include the elements of the previous shortage level(s), including the mandatory restrictions on water waste detailed in the WSCP, and each elevated shortage level is intended to be more restrictive than the previous level(s).

(7) As deemed necessary, an allocation of water supply under a water supply emergency condition beyond WSCP-defined actions may be implemented when water supply conditions dictate necessity.

### 7.02.110 Hardship Waiver.

A. Undue and Disproportionate Hardship. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use, then the person may apply for a hardship waiver of the requirements, as provided in this section.

B. A hardship waiver is automatically granted for the following uses: watering of livestock at any time; commercial agriculture; orchards and vegetable gardens on residential zoned properties; and other special landscape areas (SLA).

C. Application. Application for a hardship waiver shall be on a form prescribed by the city and accompanied by a non-refundable processing fee in an amount set by City Council resolution. The application shall be accompanied by photographs, maps, drawings, and any additional information requested by the city, including a written statement of the applicant.

D. Written Findings. The hardship waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the property. The hardship waiver will be denied unless the City Manager finds, based on the information provided by the applicant, and on water use information for the property as shows by the records of the city, all of the following:

(1) That the hardship waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses.

(2) That because of special circumstances applicable to the property or its use, the strict application of this chapter would have a disproportionate impact on the property of use that exceeds the impacts to residents and businesses generally.

(3) That authorizing the hardship waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest.

(4) That the subject property's condition, situation, or intended use for which the hardship waiver is sought is not common, recurrent, or general in nature.

E. The City Manager shall act upon a completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the hardship waiver. The applicant shall be promptly notified in writing of any action taken. Unless specified otherwise at the time it is approved, a hardship waiver will apply to the subject property during the period of the mandatory water shortage condition. The decision of the City Manager will be final.

### 7.02.120 Violations, Enforcement and Penalties

A. It shall be unlawful for any customer of the city to fail to comply with any of the provisions of this chapter. The penalties set forth in this section shall be in addition to those penalties provided in any other section of this code or in state law.

B. The penalties for failure to comply with this chapter shall be as set forth below. The penalty for a second, third, fourth, or subsequent violation within the preceding twelve (12) calendar months shall be applicable regardless of whether prior violations within such period involved the same provision of this chapter.

(1) First Violation. The city will issue a written warning and deliver a copy of this chapter by mail or posting (i.e., door hanger).

(2) Second Violation. A second violation within twelve (12) calendar months is punishable by a fine not to exceed one hundred dollars (\$100).

(3) Third Violation. A third violation within twelve (12) calendar months is punishable by a fine not to exceed two hundred and fifty (\$250).

(4) Fourth and Subsequent Violations. A fourth and any subsequent violation within twelve (12) calendar months is punishable by a fine not to exceed five hundred (\$500).

C. In addition to any fines, the city may take any of the following actions:

(1) Install a water flow restrictor device of approximately one gallon per minute.

(2) Disconnect and/or terminate a customer's water service for a willful violation of mandatory restrictions under this chapter and the WSCP.

D. If either action set forth in section 7.02.120.C is taken, the person or entity in violation of this chapter will be responsible for payment of the city's charges for installation of the flow restrictor and/or disconnection/reconnection service, as applicable. For disconnection/termination of service, a Conservation Fee equal to the Reconnection Fee as set forth in the city's Master Schedule of Fees will be assessed to the customer's water account. All associated fees must be paid in full prior to service restoration. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

E. Separate Offenses. Each day that a violation of this chapter occurs is a separate offense.

F. Notice of Violation and Hearing.

(1) Except for violations of this chapter subject to excessive water use penalties, if any person fails or refuses to comply with this chapter, the City Manager or designee shall provide that person with written notice of the violation and an opportunity to correct the noncompliance.

(2) The written Notice of Violation shall be mailed or personally delivered to the address of the violation, to the party who is billed for the water, or to the property owner, as appropriate, and shall:

- i. Be posted or presented at the site of the noncompliance;
- ii. State the time, date, and place of violation;
- iii. State a general description of the violation;
- iv. State the means to correct the violation;
- v. State a date by which correction is required; and,
- vi. State the possible consequences of failing to correct the violation.

(3) The Notice of Violation shall be mailed or personal delivered at least ten (10) days before any enforcement action.

(4) A customer may appeal the Notice of Violation by filing a written notice of appeal with the city no later than the close of business on the day before the date scheduled for enforcement action. Any Notice of Violation not timely appealed will be final. Upon receipt of a timely appeal, a hearing on the appeal will be scheduled and the city will mail written notice of the hearing date to the customer at least ten (10) days before the date of the hearing.

(5) Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the city may take appropriate steps to prevent the unauthorized use of water as appropriate to the nature and extent of the violations and the current declared water shortage level.

(6) If timely requested, a hearing on the appeal shall be held before the City Manager or designee who shall issue a final determination.

#### 7.02.130 Procedures for Monitoring Compliance and Reporting to the State

In order to ensure compliance with state reporting requirements the city will collect, track and analyze relevant date according to the procedures defined in the WSCP.

#### 7.02.140 Reevaluation and Adjustment of Water Shortage Procedures

To ensure water shortage risk tolerance is adequate and appropriate and water shortage mitigation strategies are implemented as needed, the WSCP will be regularly reviewed and evaluated as defined by the procedures identified in the WSCP.

#### 7.02.150 Other Provisions.

In furtherance of the objectives of this chapter, the City may, at its discretion, elect to include any or all of the following provisions at any or all of the water conservation stages.

A. Limits on Building Permits. The City may limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases that meet the city's adopted conservation offset requirements.

B. Customer Water Conservation Reports. The City may, by written request, require all commercial, residential and industrial customers using twenty-five thousand (25,000) or more billing units per year to submit a water conservation plan and to submit quarterly progress reports on such plan. The conservation plan must include recommendations for increased water savings, including increased water recycling based on feasibility, and the reports must include progress to date on implementation of such recommendations.

C. Reporting Hotline. The city may establish a water waste hotline for residents to report violations of this chapter.

D. As deemed necessary, an allocation of water supply under a water supply emergency condition, beyond WSCP defined actions, may be implemented when water supply shortage conditions merit that action.

E. The city may provide water efficiency devices either directly or through supported programs. Such devices shall remain within the city's service area at all times. Devices provided by the city should be used with the intent to conserve water and are not to be modified in any way or sold.

### **SECTION V:**

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

#### **SECTION VI:**

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA ) COUNTY OF ORANGE ) CITY OF ORANGE )

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2021, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_ day of \_\_\_\_\_, 2021 was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange



# Agenda Item

**City Council** 

Item #: 3.20.

11/9/2021

File #: 21-0602

### TO: Honorable Mayor and Members of the City Council

THRU: Thomas R. Hatch, Interim City Manager

FROM: Christopher Cash, Public Works Director

## 1. SUBJECT

Authorization to purchase signage, traffic control devices, roadway material, and vehicle parts and labor services for the Public Works Field Services Division.

## 2. SUMMARY

Authorize purchase orders in excess of the \$30,000 per vendor purchasing limit with BC Traffic Specialists for signage and traffic control devices, Gary Bale Redi Mix for concrete material, and Cal-State Auto Parts, Fire Solutions Apparatus, and Pete's Road Service (a sole source vendor) to support fleet maintenance, including specialized emergency services vehicles parts and services. One of five vendors is a sole source vendor and all are in excess of the \$30,000 per vendor purchasing limit.

## 3. **RECOMMENDED ACTION**

- 1. Approve purchase order for traffic control devices and signage with BC Traffic Specialists for \$60,000.
- 2. Approve purchase order for concrete material and delivery with Gary Bale Redi Mix for \$60,000.
- 3. Approve purchase order for parts and services with Cal-State Auto Parts for \$40,000.
- 4. Approve purchase order for parts and services with Fire Solutions Apparatus for \$60,000.
- 5. Approve purchase order for parts and services with Pete's Road Service, Inc., a sole source vendor, for \$75,000.

## 4. FISCAL IMPACT

The total expenditure for these purchases is \$295,000 and will be funded through:

General Fund (100)	\$120,000
Equipment Expense (710)	<u>175,000</u>
Total:	\$295,000

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a Safe Community

b. Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide Outstanding Public Service

b. Provide facilities and services to meet customer expectations

## 6. DISCUSSION AND BACKGROUND

The Field Services Division of the Public Works Department uses the informal bid process to purchase required materials by requesting that all participating vendors provide pricing for each individual item needed. Staff requests bids from at least three independent vendors to ensure the City gets the best price in a timely manner.

The vendors detailed below provide some of the lowest prices and, as such, the City routinely spends over the \$30,000 per year limit per vendor. To continue purchasing from these vendors when they offer the lowest bid, provide unique material and services, or meet timing deadlines in emergency situations, staff is requesting the City Council authorize the purchase orders, on an as needed basis and for the amounts shown in the below tables, for Fiscal Year 22.

Council is also authorized to approve procurement of certain materials, supplies, equipment and services that are unique to only one vendor, pursuant to Section 3.08.290 of the Orange Municipal Code.

The following two vendors continuously provide different traffic control devices, signs and concrete material. The amount of purchases from each vendor is over the \$30,000 per year limit per vendor.

Vendor	Amount
BC Traffic Specialist	\$60,000
Gary Bale Redi Mix	\$60,000

The Field Services Division purchases many different types of parts and outside services, which at times requires a unique provider for each. Pete's Road Service, Inc. provides both tires and 24-hour emergency roadside service for our large vehicles (i.e. fire apparatus). They also have the distinctive local ability to service larger Class 7 & 8 trucks which, due to weight capacity limitations, cannot be accomodated by the City's garage. Staff has researched available competitive options and, with the approval of the City Manager, certifies this one vendor is the only one able to supply the materials and services within the timeframe and/or under the terms and conditions which reasonably meet the needs of the Public Works Field Services Division.

Cal-State Auto Parts provides general auto parts at the lowest cost compare to other local vendors. Fire Solutions Apparatus provides fire apparatus parts and specialized repairs.

VendorAmount	
Cal-State Auto Parts	\$40,000
Fire Solutions Apparatus	\$60,000
Pete's Road Services	\$75,000

7. ATTACHMENTS

• None



# Agenda Item

**City Council** 

Item #: 3.20.

11/9/2021

File #: 21-0602

### TO: Honorable Mayor and Members of the City Council

THRU: Thomas R. Hatch, Interim City Manager

FROM: Christopher Cash, Public Works Director

## 1. SUBJECT

Authorization to purchase signage, traffic control devices, roadway material, and vehicle parts and labor services for the Public Works Field Services Division.

## 2. SUMMARY

Authorize purchase orders in excess of the \$30,000 per vendor purchasing limit with BC Traffic Specialists for signage and traffic control devices, Gary Bale Redi Mix for concrete material, and Cal-State Auto Parts, Fire Solutions Apparatus, and Pete's Road Service (a sole source vendor) to support fleet maintenance, including specialized emergency services vehicles parts and services. One of five vendors is a sole source vendor and all are in excess of the \$30,000 per vendor purchasing limit.

## 3. **RECOMMENDED ACTION**

- 1. Approve purchase order for traffic control devices and signage with BC Traffic Specialists for \$60,000.
- 2. Approve purchase order for concrete material and delivery with Gary Bale Redi Mix for \$60,000.
- 3. Approve purchase order for parts and services with Cal-State Auto Parts for \$40,000.
- 4. Approve purchase order for parts and services with Fire Solutions Apparatus for \$60,000.
- 5. Approve purchase order for parts and services with Pete's Road Service, Inc., a sole source vendor, for \$75,000.

## 4. FISCAL IMPACT

The total expenditure for these purchases is \$295,000 and will be funded through:

General Fund (100)	\$120,000
Equipment Expense (710)	<u>175,000</u>
Total:	\$295,000

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a Safe Community

b. Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide Outstanding Public Service

b. Provide facilities and services to meet customer expectations

## 6. DISCUSSION AND BACKGROUND

The Field Services Division of the Public Works Department uses the informal bid process to purchase required materials by requesting that all participating vendors provide pricing for each individual item needed. Staff requests bids from at least three independent vendors to ensure the City gets the best price in a timely manner.

The vendors detailed below provide some of the lowest prices and, as such, the City routinely spends over the \$30,000 per year limit per vendor. To continue purchasing from these vendors when they offer the lowest bid, provide unique material and services, or meet timing deadlines in emergency situations, staff is requesting the City Council authorize the purchase orders, on an as needed basis and for the amounts shown in the below tables, for Fiscal Year 22.

Council is also authorized to approve procurement of certain materials, supplies, equipment and services that are unique to only one vendor, pursuant to Section 3.08.290 of the Orange Municipal Code.

The following two vendors continuously provide different traffic control devices, signs and concrete material. The amount of purchases from each vendor is over the \$30,000 per year limit per vendor.

Vendor	Amount
BC Traffic Specialist	\$60,000
Gary Bale Redi Mix	\$60,000

The Field Services Division purchases many different types of parts and outside services, which at times requires a unique provider for each. Pete's Road Service, Inc. provides both tires and 24-hour emergency roadside service for our large vehicles (i.e. fire apparatus). They also have the distinctive local ability to service larger Class 7 & 8 trucks which, due to weight capacity limitations, cannot be accomodated by the City's garage. Staff has researched available competitive options and, with the approval of the City Manager, certifies this one vendor is the only one able to supply the materials and services within the timeframe and/or under the terms and conditions which reasonably meet the needs of the Public Works Field Services Division.

Cal-State Auto Parts provides general auto parts at the lowest cost compare to other local vendors. Fire Solutions Apparatus provides fire apparatus parts and specialized repairs.

VendorAmount	
Cal-State Auto Parts	\$40,000
Fire Solutions Apparatus	\$60,000
Pete's Road Services	\$75,000

7. ATTACHMENTS

• None



City Council

ltem #: 3.21. 1		11/9/2021	File #: 21-0603
то:	Honorable Mayor and Membe	rs of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Wor	ks Director	

## 1. SUBJECT

Authorization to purchase one vehicle for the Orange Fire Department, three motorcycles and seven vehicles for the Police Department, and four vehicles for the Public Works Department using a Cooperative Purchasing Agreement.

#### 2. SUMMARY

Purchase and equip fifteen vehicles for Orange Fire, Police, and Public Works Departments from South Coast Fire Equipment, Irv Seaver BMW, Villa Ford, and National Auto Fleet Group. City Council has previously approved the Cooperative Purchasing Agreement as the standard for vehicle and equipment procurement.

#### 3. **RECOMMENDED ACTION**

- 1. Approve the purchase of one Pierce Tiller Arrow XT Fire Truck for \$1,689,952 from South Coast Fire Equipment.
- 2. Approve the purchase of safety equipment and supplies needed to equip the Fire Apparatus from various lowest qualified vendors for \$480,000.
- 3. Approve the appropriation of \$2,169,952 from City Infrastructure Bond unreserved fund balance to expenditure account number 553.5023.55212.V2231, City Infrastructure Bond- Motor Vehicle Replacement.
- 4. Approve the purchase of three 2022 BMW motorcycles for \$85,710.
- 5. Approve the purchase of five 2022 Ford Explorers Police Pursuit Rated, one Ford Explorer K-9 Utility, and two 2022 Ford F-150 Trucks for \$433,442 from Villa Ford.
- 6. Approve the purchase of two 2022 Ford Explorer and one 2022 Chevy Bolt for \$101,480 from National Auto Fleet Group.

## 4. FISCAL IMPACT

The total expenditure for these purchases is \$2,790,584 and will be funded through:

City Infrastructure Bond (553)	\$2,169,952
Vehicle Replacement (720)	585,205
AQMD-AB 2766 Air Pollution Reduction (245)	35,427
Total:	\$2,790,584

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

#### Goal 2: Be a fiscally healthy community

a: Expend fiscal resources responsibly.

# 6. DISCUSSION AND BACKGROUND

City Council has previously authorized a Cooperative Purchasing Agreement (CPA) using Houston-Galveston Area Council (HGAC) and Sourcewell as the standard for vehicle and equipment procurement. This purchase is a continuation of that policy. A total of 29 vehicles and equipment are beyond their useful life and require replacement within Fiscal Year 2021-22. Staff has ordered five replacement vehicles previously approved by Council in August and October.

The City has secured bond funding and staff recommends the purchase of a new Pierce Tiller Arrow XT Fire Truck to be stationed at the new Fire Headquarters. The large top-mounted aerial ladder is responsible for functions like ventilation, rescue, and forcible entry. This procurement will be from Pierce Manufacturing and their local dealer South Coast Fire Equipment, through contract No. FS12-19 by HGAC.

The City has purchased fleet vehicles from South Coast Fire Equipment over the past five years and will receive a 2% discount (\$26,556) off the net price of the truck using the HGAC contract. In addition, staff recommends an upfront payment for an additional savings of 2.93% (\$38,929). These savings include purchasing a performance bond for \$3,613 to secure the upfront payment; the combined savings is \$65,484. Once ordered, the apparatus will take 17-19 months to build and equip with communications and other safety equipment, for a total not to exceed \$480,000, using several lowest qualified vendors.

In 2020, Irv Seaver provided the lowest competitive bid for the 2021 BMW Police Pursuit Motorcycles. The vendor has agreed to honor a price continuation for two 2022 BMW R1250 RT-P motorcycles, identified with their recommended replacements as follows:

Current BMW Motorcycle	Replacement BMW Motorcycle	Replacement Cost
(2) 2009 R1200	2022 R1250	\$57,140
(1) 2008 R1200	" 11	28,570
Irv Seaver Total:		\$85,710

The purchase of six 2022 Ford Explorers and two 2022 Ford F-150s will be completed using a CPA with the University of Los Angles from January 2021 (PO 3335 PYB390 and PO 3335 PYB108). Therefore, there are no additional costs or surcharges required to participate in this transaction.

Current Ford Vehicle	Replacement Ford Vehicle	Replacement Cost
2016 Explorer K9	2022 Explorer K9	\$ 64,269
2016 Explorer Interceptor	2022 Police Pursuit Utility	60,283
(4) 2017 Explorer Interceptors	" "	241,132
1993 Ranger	2022 F-150 1/2 Ton Pickup	33,879
1999 F-150	"	33,879

Item #: 3.21.

11/9/2021

	-
Villa Ford Total:	\$433,442

For the purchase of the two Ford Explorers and the Chevrolet Bolt for Orange Police and Public Works Departments, staff will utilize a nationally solicited, competitively bid, and awarded Sourcewell contract. National Auto Fleet was awarded contract No. 120716-NAF for Cars, Trucks, Vans, SUVs, and Other Vehicles, yielding pricing discounts from 1.0% to 25.86% across 15 manufacturers, depending on the model. The discount to the City averages 15% for the two Ford Explorers, and 8% for the Chevy Bolt, for a combined savings of \$13,616.

Current Ford Vehicle	Replacement Vehicle	Replacement Cost
1995 F-150	2022 Explorer XLT	\$ 34,528
2003 Explorer	2022 Explorer	31,525
2000 Explorer	2022 Chevrolet Bolt 2LT	35,427
National Auto Fleet Total:		\$101,480

As is customary in public agencies, after removing all equipment, the fourteen surplus vehicles will be auctioned, for the total sum of approximately \$9,800. Upon placement of the order, all additional vehicles will take six months to build and equip.

### 7. ATTACHMENTS

- HGAC FS12-19 Bid
- CPA bids are available for review in the Purchasing Department



City Council

ltem #: 3.21.		11/9/2021	File #: 21-0603
то:	Honorable Mayor and Memb	ers of the City Counci	
THRU:	U: Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Wo	orks Director	

## 1. SUBJECT

Authorization to purchase one vehicle for the Orange Fire Department, three motorcycles and seven vehicles for the Police Department, and four vehicles for the Public Works Department using a Cooperative Purchasing Agreement.

#### 2. SUMMARY

Purchase and equip fifteen vehicles for Orange Fire, Police, and Public Works Departments from South Coast Fire Equipment, Irv Seaver BMW, Villa Ford, and National Auto Fleet Group. City Council has previously approved the Cooperative Purchasing Agreement as the standard for vehicle and equipment procurement.

#### 3. **RECOMMENDED ACTION**

- 1. Approve the purchase of one Pierce Tiller Arrow XT Fire Truck for \$1,689,952 from South Coast Fire Equipment.
- 2. Approve the purchase of safety equipment and supplies needed to equip the Fire Apparatus from various lowest qualified vendors for \$480,000.
- 3. Approve the appropriation of \$2,169,952 from City Infrastructure Bond unreserved fund balance to expenditure account number 553.5023.55212.V2231, City Infrastructure Bond- Motor Vehicle Replacement.
- 4. Approve the purchase of three 2022 BMW motorcycles for \$85,710.
- 5. Approve the purchase of five 2022 Ford Explorers Police Pursuit Rated, one Ford Explorer K-9 Utility, and two 2022 Ford F-150 Trucks for \$433,442 from Villa Ford.
- 6. Approve the purchase of two 2022 Ford Explorer and one 2022 Chevy Bolt for \$101,480 from National Auto Fleet Group.

## 4. FISCAL IMPACT

The total expenditure for these purchases is \$2,790,584 and will be funded through:

City Infrastructure Bond (553)	\$2,169,952
Vehicle Replacement (720)	585,205
AQMD-AB 2766 Air Pollution Reduction (245)	35,427
Total:	\$2,790,584

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

#### Goal 2: Be a fiscally healthy community

a: Expend fiscal resources responsibly.

# 6. DISCUSSION AND BACKGROUND

City Council has previously authorized a Cooperative Purchasing Agreement (CPA) using Houston-Galveston Area Council (HGAC) and Sourcewell as the standard for vehicle and equipment procurement. This purchase is a continuation of that policy. A total of 29 vehicles and equipment are beyond their useful life and require replacement within Fiscal Year 2021-22. Staff has ordered five replacement vehicles previously approved by Council in August and October.

The City has secured bond funding and staff recommends the purchase of a new Pierce Tiller Arrow XT Fire Truck to be stationed at the new Fire Headquarters. The large top-mounted aerial ladder is responsible for functions like ventilation, rescue, and forcible entry. This procurement will be from Pierce Manufacturing and their local dealer South Coast Fire Equipment, through contract No. FS12-19 by HGAC.

The City has purchased fleet vehicles from South Coast Fire Equipment over the past five years and will receive a 2% discount (\$26,556) off the net price of the truck using the HGAC contract. In addition, staff recommends an upfront payment for an additional savings of 2.93% (\$38,929). These savings include purchasing a performance bond for \$3,613 to secure the upfront payment; the combined savings is \$65,484. Once ordered, the apparatus will take 17-19 months to build and equip with communications and other safety equipment, for a total not to exceed \$480,000, using several lowest qualified vendors.

In 2020, Irv Seaver provided the lowest competitive bid for the 2021 BMW Police Pursuit Motorcycles. The vendor has agreed to honor a price continuation for two 2022 BMW R1250 RT-P motorcycles, identified with their recommended replacements as follows:

Current BMW Motorcycle	Replacement BMW Motorcycle	Replacement Cost
(2) 2009 R1200	2022 R1250	\$57,140
(1) 2008 R1200	" 11	28,570
Irv Seaver Total:		\$85,710

The purchase of six 2022 Ford Explorers and two 2022 Ford F-150s will be completed using a CPA with the University of Los Angles from January 2021 (PO 3335 PYB390 and PO 3335 PYB108). Therefore, there are no additional costs or surcharges required to participate in this transaction.

Current Ford Vehicle	Replacement Ford Vehicle	Replacement Cost
2016 Explorer K9	2022 Explorer K9	\$ 64,269
2016 Explorer Interceptor	2022 Police Pursuit Utility	60,283
(4) 2017 Explorer Interceptors	" "	241,132
1993 Ranger	2022 F-150 1/2 Ton Pickup	33,879
1999 F-150	" "	33,879

Item #: 3.21.

11/9/2021

Villa Ford Total:	\$433,442

For the purchase of the two Ford Explorers and the Chevrolet Bolt for Orange Police and Public Works Departments, staff will utilize a nationally solicited, competitively bid, and awarded Sourcewell contract. National Auto Fleet was awarded contract No. 120716-NAF for Cars, Trucks, Vans, SUVs, and Other Vehicles, yielding pricing discounts from 1.0% to 25.86% across 15 manufacturers, depending on the model. The discount to the City averages 15% for the two Ford Explorers, and 8% for the Chevy Bolt, for a combined savings of \$13,616.

Current Ford Vehicle	Replacement Vehicle	Replacement Cost
1995 F-150	2022 Explorer XLT	\$ 34,528
2003 Explorer	2022 Explorer	31,525
2000 Explorer	2022 Chevrolet Bolt 2LT	35,427
National Auto Fleet Total:		\$101,480

As is customary in public agencies, after removing all equipment, the fourteen surplus vehicles will be auctioned, for the total sum of approximately \$9,800. Upon placement of the order, all additional vehicles will take six months to build and equip.

## 7. ATTACHMENTS

- HGAC FS12-19 Bid
- CPA bids are available for review in the Purchasing Department



Date

			•	U		v		s issued, both or print legil	
Buying Agency: City of	of Orang	;e			Contractor:	South C	Coast Fire	Equipment/Pierce	Manufacturing
Contact Person: Doug	g Yates				Prepared By:	Kevin Newell			
	288-2506	5			Phone:	909-673-9900	)		
Fax:					Fax:				
Email: dya	tes@	cityoforang	e.org		Email:	orders@s	southc	oastfire.net	
Product Code: FS19	9VA11	Description:	Pierce Arrow (	Chassis, 4-Door I	Full Tilt Alu	ıminum Cab, l	Formed A	Aluminum Body, S	Single Axle, 107' Tra
A. Product Item Ba	ase Uni	it Price Per C	ontractor's H-(	GAC Contract:					\$1,327,786.00
<b>B. Published Optio</b> (Note: Published Option						Include Opti	ion Cod	e in description	if applicable.
	Desc	cription		Cost		Descr	iption		Cost
				e					
						Subtotal F	rom Add	itional Sheet(s):	\$230,799.00
								Subtotal B:	\$230,799.00
C. Unpublished Op	ptions -	Itemize belov	w / attach addit	ional sheet(s) if	f necessary	7		Ι <u></u>	
	Desc	cription		Cost		Descr	iption		Cost
						Subtotal F	rom Add	itional Sheet(s):	\$47,134.00
								Subtotal C:	\$47,134.00
Check: Total cost of			C) cannot exceed lished Options (A+		of the Base	For this trans	saction th	ne percentage is:	3.02%
D. Total Cost Before			-In / Other Allow			[r			
Quantity Or				X Subtotal of	$\mathbf{A} + \mathbf{B} + \mathbf{C}$ :	1605719	=	Subtotal D:	\$1,605,719.0
E. H-GAC Order Pro	ocessing	Charge (Amo	unt Per Current J	Policy)				Subtotal E:	\$2,000.0
F. Trade-Ins / Other	Allowa	nces / Special E	Discounts / Freigh	t / Installation	r				
		cription		Cost			iption		Cost
		nance Bond		\$3,612.87		Tire	e Fee		\$14.0
100%		ayment Discour	nt	-\$42,541.00				n	
	Sal	es Tax		\$121,146.30				Subtotal F:	\$82,232.1
	De	livery Date	: 1'	7-19 months	G. To	tal Purcha	se Pric	e (D+E+F):	\$1,689,951.17



City Council

Item #: 3	.22. 11/9/2021	File #: 21-0609	
то:	Honorable Mayor and Members of the City Council		
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Works Director		

## 1. SUBJECT

Authorization to purchase Fire Station 4 apparatus door replacement.

### 2. SUMMARY

Request to authorize an after-the-fact purchase order for the emergency replacement of the Fire Station 4 apparatus door. The Fire Station 4 front apparatus door is damaged beyond repair and needs to be replaced. The engine and rescue units are both operating outside the station. This impact has created concerns with apparatus security, emergency response times, and potential apparatus damage from weatherization.

#### 3. **RECOMMENDED ACTION**

Approve purchase order for Fire Station 4 apparatus door replacement with Orange County Overhead Door Company for \$48,550.

#### 4. FISCAL IMPACT

The total expenditure for this purchase is \$48,550 and will be funded through:

City Facility Improvements (725)	\$24,275
Fire Facility Fees (560)	24,275
Total:	\$48,550

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b. Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b. Provide facilities and services to meet customer expectations.

#### 6. DISCUSSION AND BACKGROUND

Fire Station 4, located at 210 South Esplanade Street, serves the southeast portion of the City of Orange. The Fire Station 4 apparatus door is permanently damaged beyond repair. In order to restore functionality to the fire station, the purchase order was opened under an emergency procurement via OMC 3.08.290. The current condition creates concerns with apparatus security, emergency response times, and potential weather damage to the apparatus from being parked

outside for an extended length of time.

Staff reached out to three vendors, and Orange County Overhead Door Company provided the lowest pricing at \$48,550. This company has provided similar services for other fire stations. The lead time for the new apparatus door is 16 weeks, and the order was placed in early October with City Manager approval. Since staff was able to proceed under an emergency procurement, this saved four weeks and will allow the apparatus and crews to get back to normal operations sooner.

# 7. ATTACHMENT

• Orange County Overhead Door Company Estimate



City Council

Item #: 3	.22. 11/9/2021	File #: 21-0609	
то:	Honorable Mayor and Members of the City Council		
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Works Director		

## 1. SUBJECT

Authorization to purchase Fire Station 4 apparatus door replacement.

## 2. SUMMARY

Request to authorize an after-the-fact purchase order for the emergency replacement of the Fire Station 4 apparatus door. The Fire Station 4 front apparatus door is damaged beyond repair and needs to be replaced. The engine and rescue units are both operating outside the station. This impact has created concerns with apparatus security, emergency response times, and potential apparatus damage from weatherization.

#### 3. **RECOMMENDED ACTION**

Approve purchase order for Fire Station 4 apparatus door replacement with Orange County Overhead Door Company for \$48,550.

#### 4. FISCAL IMPACT

The total expenditure for this purchase is \$48,550 and will be funded through:

City Facility Improvements (725)	\$24,275
Fire Facility Fees (560)	<u>24,275</u>
Total:	\$48,550

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b. Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b. Provide facilities and services to meet customer expectations.

#### 6. DISCUSSION AND BACKGROUND

Fire Station 4, located at 210 South Esplanade Street, serves the southeast portion of the City of Orange. The Fire Station 4 apparatus door is permanently damaged beyond repair. In order to restore functionality to the fire station, the purchase order was opened under an emergency procurement via OMC 3.08.290. The current condition creates concerns with apparatus security, emergency response times, and potential weather damage to the apparatus from being parked

outside for an extended length of time.

Staff reached out to three vendors, and Orange County Overhead Door Company provided the lowest pricing at \$48,550. This company has provided similar services for other fire stations. The lead time for the new apparatus door is 16 weeks, and the order was placed in early October with City Manager approval. Since staff was able to proceed under an emergency procurement, this saved four weeks and will allow the apparatus and crews to get back to normal operations sooner.

# 7. ATTACHMENT

• Orange County Overhead Door Company Estimate

# THE ORIGINAL COMPANY + SINCE 1963

#### Orange County Overhead Door

2440 N. Glassell Street, Unit D Orange, CA 92865 +1 7149989070 ocdoor@pacbell.net www.originalocdoor.com

# Estimate

ADDRESS	SHIP TO	ESTIMATE	18634
City of Orange Fire Station #4	City of Orange Fire Station #4	DATE	10/06/2021
c/o City of Orange	201 S. Esplanade	EXPIRATION	10/21/2021
Accounts Payable Division	Orange, CA	DATE	
300 E. Chapman Ave.			
Orange, CA 92866-1508			

#### P.O. NUMBER

114846

SALES REP Chuck

DATE	ACTIVITY	QTY	RATE	AMOUNT
	Commercial Job			
	OC 10 Remove and haul away the existing apparatus door.	1	1,600.00	1,600.00
	OC 10 Estimate To Supply & Install:	1	41,250.00	41,250.00
	One (1) 26'x14' Porvene Door Model 622. Door to be 22-Gauge Insulated Flat Slats with 24-Gauge Back Slats with 5.4 R-Value. Door to be powder coated RAL 3001.			
	Includes Seven (7) Slats of Clear Lexan Vision Lites, One (1) 24-Gauge Hood Cover, and Bottom Weather Seal with Guide Seal.			
	Springs to have 20,700 cycles.			
	One (1) 1-1/2 HP LiftMaster Model GH 115v Single Phase Electric Operator.			
	Installation includes Auxiliary Chain Hoist and Photo Safety Sensors.			
	To use the existing push button station.			
	OC 10 Add \$4,250.00 for exterior powder coating of the door in RAL 3001.	1	4,250.00	4,250.00
	OC 10 Add \$1,450.00 for Bottom Safety Edge.	1	1,450.00	1,450.00

Notes:

- Price is valid through October 21, 2021.

- Please allow 11-16 week lead time due to COVID-19 production delays.

4

50% Deposit of \$24,275.00 and Signed Proposal Required To Order Materials

#### 0

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance. This proposal may be withdrawn by us if not accepted within 30 days.

Please let us know if you have any questions regarding your estimate.

TOTAL

\$48,550.00

We look forward to working with you!

Accepted By

Accepted Date



**City Council** 

Item #: 3	.23. 11/9/202	1 <b>File #:</b> 21-0625	
то:	Honorable Mayor and Members of the	City Council	
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Sean deMetropolis, Fire Chief		

## 1. SUBJECT

Authorization to purchase furniture, fixtures, and equipment and site furnishings totaling \$807,000 for the new Fire Headquarters and Station No. 1.

#### 2. SUMMARY

The Fire Department is seeking authorization for the purchase of furniture for the new Fire Headquarters and Fire Station No. 1. Regional Cooperative Agreement No. RCA-017-18010014, with Goforth and Marti dba G/M Business Interiors, will be utilized for a total of \$300,000. Authorization is also requested for the City Manager to execute contracts and purchase orders greater than \$30,000 relating to the purchase and installation of furniture, fixtures and equipment and site furnishings in the amount of \$507,000.

#### 3. **RECOMMENDED ACTION**

- 1. Approve the purchase of furniture from Goforth & Marti dba G/M Business Interiors for a total of \$300,000.
- 2. Authorize the City Manager to execute contracts and purchase orders in excess of \$30,000 relating to the purchase and installation of furniture, fixtures and equipment and site furnishings from various vendors in the amount of \$507,000 for the new Fire Headquarters and Station No. 1.
- 3. Authorize the appropriation of \$807,000 from the Capital Bond Proceeds unreserved fund balance to expenditure account 553.5011.56031.20400 Capital Bond Proceeds Fire Station No. 1 and Headquarters.

## 4. FISCAL IMPACT

The total expenditure for this purchase is \$807,000 and will be funded in Fire Station 1 (20400) through City Infrastructure Bond (553).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

#### Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

Construction for the new Fire Headquarters and Fire Station No. 1 began in January 2021. This facility will be comprised of Fire Department management, operations, administration, and fire prevention staff. As the estimated completion date is February 2022, we are requesting approval to begin the process of purchasing furniture, fixtures, and equipment (FF&E).

PBK-WLC Architects (PBK-WLC) provided consultant design services, including the preparation of plans, specifications, and cost estimates for the new Fire Headquarters. In addition, they are assisting with space planning and construction support services during the progress of construction. PBK-WLC has been working with G/M Business Interiors (G/M) on developing a furniture plan for this project and staff requests Council approval to purchase furniture through them, using a cooperative agreement.

G/M has been in business since 1944, and specializes in products and services to customers in government, healthcare, education, and private enterprise. G/M offers superior customer service and expertise in design. They were responsible for furnishing the newly remodeled Emergency Operations Center at the Orange Police Department. They are also a preferred provider for furnishings with the County of Orange. The most cost-effective purchase price can be obtained through Regional Cooperative Agreement No. RCA-017-18010014 with G/M Business Interiors for a total of \$300,000. The delivery and installation will be coordinated by the contractor to ensure the facility is ready for the opening in Spring 2022.

The Fire Department is also seeking to execute contracts and purchase orders relating to the purchase and installation of FF&E from various vendors, yet to be determined. With the ongoing supply chain challenges and commodity cost increases due to the Covid-19 pandemic, this authorization will shrink the timeframe for securing goods. Best practices will be followed to adhere to the City's purchasing policies in procuring goods using cooperative agreements, lowest bids, and local suppliers. Staff is also requesting City Manager authority to exceed the budget for large line items by no more than 25%, should no other alternative be identified.

Included in this request is IT equipment such as telephones, computers and networking equipment to ensure continuity of communications during the move into the new headquarters, as well as updated technology for a state-of-the-art facility. This component of the costs is estimated at \$187,000.

Also included are station outfitting costs such as the Department Operating Center (to function as a component of the City's Emergency Operations Center), hose racks, a fitness center, office furnishings for the department's plan-check function, and other various items. This component of the costs is estimated at \$320,000.

This authorization will allow staff to more rapidly and efficiently purchase FF&E and furnish the new Fire Headquarters and Station No. 1.

# 7. ATTACHMENTS

• None



City Council

<b>Item #:</b> 3	.23. 11/9/2021	File #: 21-0625	
то:	Honorable Mayor and Members of the City Cou	uncil	
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Sean deMetropolis, Fire Chief		

## 1. SUBJECT

Authorization to purchase furniture, fixtures, and equipment and site furnishings totaling \$807,000 for the new Fire Headquarters and Station No. 1.

#### 2. SUMMARY

The Fire Department is seeking authorization for the purchase of furniture for the new Fire Headquarters and Fire Station No. 1. Regional Cooperative Agreement No. RCA-017-18010014, with Goforth and Marti dba G/M Business Interiors, will be utilized for a total of \$300,000. Authorization is also requested for the City Manager to execute contracts and purchase orders greater than \$30,000 relating to the purchase and installation of furniture, fixtures and equipment and site furnishings in the amount of \$507,000.

#### 3. **RECOMMENDED ACTION**

- 1. Approve the purchase of furniture from Goforth & Marti dba G/M Business Interiors for a total of \$300,000.
- 2. Authorize the City Manager to execute contracts and purchase orders in excess of \$30,000 relating to the purchase and installation of furniture, fixtures and equipment and site furnishings from various vendors in the amount of \$507,000 for the new Fire Headquarters and Station No. 1.
- 3. Authorize the appropriation of \$807,000 from the Capital Bond Proceeds unreserved fund balance to expenditure account 553.5011.56031.20400 Capital Bond Proceeds Fire Station No. 1 and Headquarters.

## 4. FISCAL IMPACT

The total expenditure for this purchase is \$807,000 and will be funded in Fire Station 1 (20400) through City Infrastructure Bond (553).

## 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

#### Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

Construction for the new Fire Headquarters and Fire Station No. 1 began in January 2021. This facility will be comprised of Fire Department management, operations, administration, and fire prevention staff. As the estimated completion date is February 2022, we are requesting approval to begin the process of purchasing furniture, fixtures, and equipment (FF&E).

PBK-WLC Architects (PBK-WLC) provided consultant design services, including the preparation of plans, specifications, and cost estimates for the new Fire Headquarters. In addition, they are assisting with space planning and construction support services during the progress of construction. PBK-WLC has been working with G/M Business Interiors (G/M) on developing a furniture plan for this project and staff requests Council approval to purchase furniture through them, using a cooperative agreement.

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The Fire Department is also seeking to execute contracts and purchase orders relating to the purchase and installation of FF&E from various vendors, yet to be determined. With the ongoing supply chain challenges and commodity cost increases due to the Covid-19 pandemic, this authorization will shrink the timeframe for securing goods. Best practices will be followed to adhere to the City's purchasing policies in procuring goods using cooperative agreements, lowest bids, and local suppliers. Staff is also requesting City Manager authority to exceed the budget for large line items by no more than 25%, should no other alternative be identified.

Included in this request is IT equipment such as telephones, computers and networking equipment to ensure continuity of communications during the move into the new headquarters, as well as updated technology for a state-of-the-art facility. This component of the costs is estimated at \$187,000.

Also included are station outfitting costs such as the Department Operating Center (to function as a component of the City's Emergency Operations Center), hose racks, a fitness center, office furnishings for the department's plan-check function, and other various items. This component of the costs is estimated at \$320,000.

This authorization will allow staff to more rapidly and efficiently purchase FF&E and furnish the new Fire Headquarters and Station No. 1.

# 7. ATTACHMENTS

• None



**City Council** 

ltem #: 3	.24. 11/9/2021	File #: 21-0578	
то:	Honorable Mayor and Members of the C	ity Council	
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Works Director		

## 1. SUBJECT

Water rate pass-through notice for Calendar Year 2022.

### 2. SUMMARY

City staff calculated the pass-through charge for Calendar Year 2022 using the formula approved by the City Council in December 2017. The calculation resulted in an additional \$0.06 per billing unit adjustment from last year's rate to offset cost increases in water purchases necessary to supply water to the City.

#### 3. **RECOMMENDED ACTION**

Receive and file.

#### 4. FISCAL IMPACT

Additional pass-through revenues of \$712,800 will offset corresponding expenditures for import water and ground water costs.

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

b: Analyze future fiscal needs and potential revenue opportunities.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

## 6. DISCUSSION AND BACKGROUND

On December 12, 2017, City Council approved Resolution No. 11046 amending and revising the Master Schedule of Fees and Charges for water rates. This Resolution approved a five-year rate structure and a pass-through formula. The pass-through charge is calculated every year and takes into account only increases in purchases of water required to supply water to the City. Any such adjustments will only be made to the extent such increases are not already reflected in the schedule of charges. A notice of at least 30 days will be mailed to customers before any such adjustments will take effect. The pass-through rate is calculated by assessing the difference in wholesale water purchase costs using the previous year's wholesale rates and the current year's wholesale rates. The additional expense is then divided over the next calendar year's projected usage. This passes through any increase in the City's water purchase costs.

Item #: 3.24.

Based on the results generated by the approved pass-through formula, staff is recommending a pass -through charge of \$0.06 per unit over last year's rate for Calendar Year 2022. The pass-through calculation takes into account two major elements contributing to the Water Supply cost: imported water costs (Metropolitan Water District of Southern California via the Municipal Water District of Orange County), and groundwater costs (Orange County Water District). The pass-through charge of \$0.06 per unit (one unit = 748 gallons), as well as the 5% rate adjustment approved by Council on December 12, 2017, will take effect on January 1, 2022.

The average water customer uses 39 units of water every two months (29,172 gallons). Based on the current water rates, the average customer has a bill of \$136.16 bi-monthly. With the 5% rate increase that was approved for January 2022 and the addition of the \$0.06 per unit pass through charge, the average bill will increase to \$145.26 bi-monthly. For the average Orange household, this is a total bi-monthly increase of \$9.10.

The \$0.06 per unit adjustment represents approximately \$712,800 in revenue to the Water Fund. Ratepayers will receive postcards with the pass-through information at least 30 days prior to implementation.

# 7. ATTACHMENTS

• Postcard containing pass-through information



**City Council** 

ltem #: 3	.24. 11/9/2021	File #: 21-0578	
то:	Honorable Mayor and Members of the C	ity Council	
THRU:	Thomas R. Hatch, Interim City Manager		
FROM:	Christopher Cash, Public Works Director		

1. SUBJECT

Water rate pass-through notice for Calendar Year 2022.

## 2. SUMMARY

City staff calculated the pass-through charge for Calendar Year 2022 using the formula approved by the City Council in December 2017. The calculation resulted in an additional \$0.06 per billing unit adjustment from last year's rate to offset cost increases in water purchases necessary to supply water to the City.

#### 3. RECOMMENDED ACTION

Receive and file.

#### 4. FISCAL IMPACT

Additional pass-through revenues of \$712,800 will offset corresponding expenditures for import water and ground water costs.

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

b: Analyze future fiscal needs and potential revenue opportunities.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

## 6. DISCUSSION AND BACKGROUND

On December 12, 2017, City Council approved Resolution No. 11046 amending and revising the Master Schedule of Fees and Charges for water rates. This Resolution approved a five-year rate structure and a pass-through formula. The pass-through charge is calculated every year and takes into account only increases in purchases of water required to supply water to the City. Any such adjustments will only be made to the extent such increases are not already reflected in the schedule of charges. A notice of at least 30 days will be mailed to customers before any such adjustments will take effect. The pass-through rate is calculated by assessing the difference in wholesale water purchase costs using the previous year's wholesale rates and the current year's wholesale rates. The additional expense is then divided over the next calendar year's projected usage. This passes through any increase in the City's water purchase costs.

Item #: 3.24.

Based on the results generated by the approved pass-through formula, staff is recommending a pass -through charge of \$0.06 per unit over last year's rate for Calendar Year 2022. The pass-through calculation takes into account two major elements contributing to the Water Supply cost: imported water costs (Metropolitan Water District of Southern California via the Municipal Water District of Orange County), and groundwater costs (Orange County Water District). The pass-through charge of \$0.06 per unit (one unit = 748 gallons), as well as the 5% rate adjustment approved by Council on December 12, 2017, will take effect on January 1, 2022.

The average water customer uses 39 units of water every two months (29,172 gallons). Based on the current water rates, the average customer has a bill of \$136.16 bi-monthly. With the 5% rate increase that was approved for January 2022 and the addition of the \$0.06 per unit pass through charge, the average bill will increase to \$145.26 bi-monthly. For the average Orange household, this is a total bi-monthly increase of \$9.10.

The \$0.06 per unit adjustment represents approximately \$712,800 in revenue to the Water Fund. Ratepayers will receive postcards with the pass-through information at least 30 days prior to implementation.

# 7. ATTACHMENTS

• Postcard containing pass-through information





# Notice of Pass Through Increase

Resolution No. 11046 authorized annual adjustments to the water service rates. The cost increases incurred by the City from the providers of wholesale water are to be passed through as modifications to the water rates. The amount of pass-through adjustment accounts for the difference in actual wholesale water purchase costs and projected wholesale water purchase costs. The pass-through adjustment applies only to the consumption charge on a customer's bill.

The Pass-Through adjustment incorporates cost increases from the following agencies:

- The Municipal Water District of Orange County (MWDOC), our regional water wholesaler for imported water.
- Orange County Water District (OCWD), our basin storage management and pumping of ground water.

As calculated, a pass-through adjustment of 0.06 per billing unit (1 unit = 100 cubic feet = 748 gallons) will be added to the water consumption charge effective January 1, 2022. The new rate schedule is presented in the table on the reverse side of this notice. Please note that the new rate schedule includes a 5% increase that was adopted as part of the resolution.

If you have any question regarding this notice, please contact the City of Orange Water Billing Office at (714) 744-2233.

#### Water Consumption Charge (bi-monthly)

This charge is based on water usage. The metered water usage is billed in units of 100 cubic feet (1 unit = 100 cubic feet = 748 gallons) as applied to a tiered rate structure. For more information on water rates please visit our website at www.cityoforange.org.

#### **Single Famiy Residential**

Water Usage Per Unit	Effective 01/01/2022 through 12/31/2022
0-23	\$2.87
24-42	\$2.95
>42	\$3.05

#### CITY OF ORANGE WATER DIVISION (714) 288-2475 • 24 Hour emergency (714) 538-1961 www.cityoforange.org

City of Orange Water Division 189 South Water Street Orange, California 92866

PRESORTED STANDARD U.S. POSTAGE **PAID** SANTA ANA, CA PERMIT NO. 647

#### **Multi-Famiy Residential**

Water Usage Per Unit	Effective 01/01/2022 through 12/31/2022
0-15	\$2.87
16-19	\$2.91
>19	\$2.96

#### Commercial

Water Usage Per Unit	Effective 01/01/2022 through 12/31/2022				
Flat Rate	\$2.94				

#### **Construction and Agriculture**

Water Usage Per Unit	Effective 01/01/2022 through 12/31/2022				
Flat Rate	\$2.93				



**City Council** 

ltem #: 3.25.	11/9/2021	File #: 21-0604
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TO: Honorable Mayor and Members of the City Council

THRU: Thomas R. Hatch, Interim City Manager

FROM: Richard A. Rohm, City Treasurer Will Kolbow, Assistant City Manager/Administrative Services Director

### 1. SUBJECT

Monthly Treasurer's Reports for July, August, and September 2021.

#### 2. SUMMARY

Presentation of three monthly Treasurer's Reports to the City Council after the end of the quarter covered by the reports.

### 3. **RECOMMENDED ACTION**

Receive and file.

#### 4. FISCAL IMPACT

None.

## 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

d: Effectively manage and develop City assets.

## 6. DISCUSSION AND BACKGROUND

The City's current Statement of Investment Policy has been adopted by the City Council of the City of Orange as Resolution 11340 and is in accordance with the California Government Code Sections 53600 et seq. Per the Investment Policy, three monthly investment reports are to be submitted to the City Council within 45 days following the end of the quarter.

As required by the City's present Investment Policy, the City Treasurer's report delineates all investments made by the City Treasurer for the City, its special funds, and the Successor Agency funds, by investment type and by broker.

The monthly Compliance Report certifying compliance of all investments with both the Government Code and the City's Investment Policy is included.

The Investment Portfolio Statement accurately reflects all investments held by the City and its agents as of the end of the month. This investment data is also presented in other summary and graphic form. A reconciliation between total cash and investments and total cash per the General Ledger is also included.

#### 11/9/2021

All of the three monthly Treasurer's Reports have been reviewed by the Investment Advisory Committee (IAC).

#### Summary of changes in Treasurer's cash and investments:

	Operating Cash & Investments (1)
Balance @ 6/30/2021	\$147,989,853
Monthly Activity:	
Cash Received	47,063,741
Cash Disbursed	<u>(64,193,269)</u>
Balance @ 9/30/2021	\$130,860,325

<sup>(1)</sup>Includes operating cash and investments (valued at cost). Does not include deposits with administrator, imprest cash, fiscal agent cash and investments, and deferred compensation.

#### For the month of July 2021

The July cash disbursements exceeded cash receipts by \$4,719,099. During the month, large disbursements included payments totaling \$4,570,544 to Orange County Water District for pumping assessments, \$1,867,620 to PERS for employee benefits, \$1,132,239 to Municipal Water District of Orange County for purchased water, \$936,719 to R.C. Construction for Fire Station No. 1 and Fire Headquarters, \$446,001 to Big Ben for annual sewer replacement, and \$429,286 to Municipal Water District of Orange County for annual water connection charge. The City received \$4,508,602 in sales tax revenue, and \$391,939 in property tax revenue.

The City purchased two Federal Home Loan Bank notes (0.65% for 3.75 years, 0.90% for 5 years), and one medium term note was called. The City's balance in L.A.I.F. on July 31 was \$57,300,000 or a decrease of \$9,200,000 due to cash disbursements exceeding cash receipts during the month.

#### For the month of August 2021

The August cash disbursements exceeded cash receipts by \$5,426,714. During the month, large disbursements included payments totaling \$4,754,075 to U.S. Bank for debt service payments, \$2,900,000 to the Law Offices of Dale Galip for a claim settlement, \$2,711,994 to CIPA for the City's insurance contribution, \$1,856,755 to PERS for employee benefits, \$1,409,122 to Municipal Water District of Orange for purchased water, and \$308,420 to General Pump Company for well maintenance. The City received \$5,633,161 in sales tax revenue, and \$2,283,043 bond draw in bond requisition from the lease revenue bonds issued to finance the Fire Headquarters and Fire Station No.1 project.

During the month, one Federal Home Loan Bank note was called. The City's balance in L.A.I.F. on August 31 was \$54,300,000, or a decrease of \$3,000,000, due to cash disbursements exceeding cash receipts during the month.

#### For the month of September 2021

The September cash disbursements exceeded cash receipts by \$6,983,715. During the month, large disbursements included payments totaling \$2,818,419 to U.S. Bank for debt service payments,

Item #: 3.25.

\$1,848,665 PERS for employee benefits, \$1,596,343 to Municipal Water District of Orange for purchased water, \$1,417,243 to R.C. Construction for Fire Station No. 1 and Fire Headquarters, \$1,084,622 to RJ Noble Company for pavement management, \$980,610 to Zoll Medical for Fire medical equipment, \$739,633 to Kasa Construction for Handy Park Maintenance, and \$549,471 to Big Ben for sewer replacement. The City received \$4,507,961 in sales tax revenue, and \$490,593 in property tax revenue.

The City purchased one U.S. Treasury note (0.875% for 5 years). The City's balance in L.A.I.F. on September 30 was \$47,400,000 or a decrease of \$6,900,000 due to cash disbursements exceeding cash receipts during the month

#### Credit rating on investments

The HSBC medium term note in the portfolio has been downgraded by Standard and Poor's (S&P) from "A" to "A-", which is one level below the minimum "A" rating permitted in the investment policy. It should be noted S&P is the only credit rating agency that issued the downgrade. The other two major national rating companies of Moody's and Fitch have maintained the same bond credit rating.

If a security is downgraded one notch below the quality required in the investment policy, it is considered acceptable to retain such downgraded security in the portfolio. If a security is rated two grades below the required minimum rating, it will trigger an automatic sale of such downgraded security. Staff will continue to monitor the downgraded HSBC investment.

#### Investment Advisory Committee (IAC)

The most recent IAC meeting was November 3, 2021 while the next quarterly Committee meeting is to be scheduled for February 2022.

## 7. ATTACHMENTS

- Investment Report for July 2021
- Investment Report for August 2021
- Investment Report for September 2021



**City Council** 

ltem #: 3.25.	11/9/2021	File #: 21-0604
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#### Investment Advisory Committee (IAC)

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## 7. ATTACHMENTS

- Investment Report for July 2021
- Investment Report for August 2021
- Investment Report for September 2021

1. Investment Report for July 2021

# MONTHLY SUMMARY COMPLIANCE CERTIFICATE July 2021

**Note:** All concentration restrictions were obtained from Sections 53601 and 53635 of the Government Code or the City's Investment Policy as of June 8, 2021, whichever was the more stringent.

## 1. U.S. Agencies

<u>l.</u>	(A) Total amount (book value) of U.S. Agency securities owned by the City $=$ <u>\$65,081,205.</u>
	$(11) \text{ Four amount (book value) of 0.5. Agency securities owned by the only \underline{\bullet bb}, \underline{bb}, bb$
	(B) Total amount allowed (75% of portfolio book value) of all City investments = $\$106, \$21, 775$ .
	Is (A) less than (B) at time of purchase? Yes X No
<u>2.</u>	Money Market Mutual Funds
	(A) Total amount (book value) invested in money market mutual funds by the City = <u>\$2,825,441</u> .
	(B) Total amount allowed (\$15 million or 20% of portfolio book value, whichever is less) of all City investments = <u>\$15,000,000</u>
	Is (A) less than (B)? Yes X No
3	Medium-Term Notes
<u>J.</u>	(A) Total amount (book value) invested in medium-term notes by the City = $\$17,222,388$ .
	(B) Total amount allowed (20% of portfolio book value) of all City investments = $\$28,485,807$ .
	Is (A) less than (B) at time of purchase? Yes X No
<u>4.</u>	Excluded Investment Vehicles
	(A) Are any securities excluded by the Statement of Investment Policy currently included in the
	City's portfolio?
	Yes NoX
<u>5.</u>	Investment Management Agreements
	(A) Does the City have any investment manager or advisor agreements?
	YesNoX
	(B) If so, was the agreement approved in advance by the City Council?
	Yes No
	(C) If so, has the City examined the methods and past performance of the investment manager? Yes No
	(D) If so, pursuant to the agreement, does the City retain authority to make investment decisions?
	Yes No
	(E) If so, pursuant to the agreement, are the investments deposited with the City's custodian?
	Yes No

0. Maturity Limits
(A) Does the City currently own any security with a maturity date in excess of five years?
Yes NoX
(B) Does the City currently hold no more than 50% of its portfolio in securities at time of purchase with maturities between 366 days and 730 days?
Yes_X No
(C) Does the City currently hold no more than 35% of its portfolio in securities at time of purchase
with maturities between 731 days and 1095 days?

Yes X No \_\_\_\_\_

- (D) Does the City currently hold no more than 30% of its portfolio in securities at time of purchase with maturities between 1096 days and 1460 days? Yes X No
- (E) Does the City currently hold no more than 30% of its portfolio in securities at time of purchase with maturities between 1461 days and 1825 days?

No\_\_\_\_\_ Yes X

#### 7. Issuer Limits

6 Maturity Limits

Does each issuer of Money Market Mutual Funds continue to meet the following requirements?

- (i) Is each issuer registered with the Securities and Exchange Commission under the Investment Company Act of 1940? Yes No N/A\_X\_\_\_\_
- (ii) Does the fund of each issuer carry the highest rating of at least two of the three largest national rating agencies?

No N/A X Yes

(iii) Has each issuer retained an investment adviser registered with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of \$500 million?

> Yes No N/A X

Prepared By:

hive Chan

Josephine Chan Investment/Revenue Officer

Audited By:

Rosario Guzman

Accountant

We hereby certify that for the month of July 2021, the investment actions of the City of Orange comply in all respects with the requirements of the California Government Code and the City's current Investment Policy. Additionally, we certify that there is sufficient cash flow to cover the next six months' expenditures barring any catastrophic natural disasters. Market values are obtained through ICE Data Pricing and Reference Data, the State Treasurer's Office, U.S. Trust and U.S. Bank.

Certified By:

Richard A. Rohm

Richard A. Rohm City Treasurer

Verified By:

Hill hollow

William M. Kolbow Assistant City Manager Administrative Services Director

DATED: October 20, 2021

#### City of Orange Investment Portfolio July 31, 2021 (Sorted by TYPE)

BANK / BROKER	PURCHASE DATE	DESCRIPTION	MATURITY DATE	RATE	YIELD	PAR VALUE	BOOK VALUE	MARKET VALUE
(I) LOCAL AGENCY INVESTMENT FUND	(LAIF)							
		City	-	0.221	0.221	33,800,000.00	33,800,000.00	33,800,000.00
		OSA	-	0.221	0.221	23,500,000.00	23,500,000.00	23,500,000.00
						57,300,000.00	57,300,000.00	57,300,000.00
(II) FEDERAL HOME LOAN MORTGAGE	CORPORATION							
Stifel Nicolaus & Co Inc.	12/10/2020	FHLMC	3/29/2024	0.350	0.350	5,000,000.00	5,000,000.00	4,997,022.95
Stifel Nicolaus & Co Inc.	11/19/2020		9/25/2024	0.400	0.408	4,575,000.00	4,573,877.05	4,568,999.57
UBS Financial Services	12/17/2020	FHLMC	6/17/2025	0.500	0.500	2,500,000.00	2,500,000.00	2,492,471.15
Stifel Nicolaus & Co Inc.	10/28/2020	FHLMC	10/28/2025	0.600	0.600	9,000,000.00	9,000,000.00	8,972,145.90
						21,075,000.00	21,073,877.05	21,030,639.57
(III) FEDERAL NATIONAL MORTGAGE A								
UBS Financial Services	12/29/2020		12/29/2023	0.280	0.280	5,000,000.00	5,000,000.00	4,998,502.80
UBS Financial Services	11/20/2020		5/17/2024	0.375	0.375	5,000,000.00	5,000,000.00	5,011,432.70
UBS Financial Services	12/14/2020	FNMA	6/14/2024	0.375	0.375	5,000,000.00	5,000,000.00	4,997,392.00
UBS Financial Services	11/20/2020	FNMA	2/18/2025	0.500	0.500	5,000,000.00	5,000,000.00	5,005,841.40
						20,000,000.00	20,000,000.00	20,013,168.90
(IV) FEDERAL HOME LOAN BANK								
Stifel Nicolaus & Co Inc.	3/29/2021	FHLB	3/28/2024	0.350	0.370	5,000,000.00	4,997,339.20	4,997,014.50
Stifel Nicolaus & Co Inc.	7/28/2021	FHLB	4/28/2025	0.650	0.650	4,000,000.00	4,000,000.00	4,001,651.12
Stifel Nicolaus & Co Inc.	5/4/2021	FHLB	4/29/2025	0.750	0.750	5,000,000.00	5,000,000.00	5,003,365.40
UBS Financial Services	5/27/2021	FHLB	5/27/2026	1.125	1.125	5,000,000.00	5,000,000.00	5,002,569.85
Stifel Nicolaus & Co Inc.	7/29/2021	FHLB	7/29/2026	0.900	0.859	5,000,000.00	5,009,988.89	5,009,281.15
						24,000,000.00	24,007,328.09	24,013,882.02
(V) MEDIUM TERM NOTE								
UBS Financial Services	9/20/2019	Coca Cola	9/6/2024	1.750	2.000	3,000,000.00	2,977,993.42	3,118,837.50
UBS Financial Services	12/10/2019	HSBC	6/23/2024	3.500	2.142	6,000,000.00	6,223,203.67	6,482,069.94
Stifel Nicolaus & Co Inc.	11/19/2020	Toyota	10/16/2025	0.800	0.696	5,000,000.00	5,021,434.63	4,970,797.60
Stifel Nicolaus & Co Inc.	2/8/2021	Apple	2/8/2026	0.700	0.702	3,000,000.00	2,999,755.95	2,984,062.89
						17,000,000.00	17,222,387.67	17,555,767.93
(VI) MONEY MARKET MUTUAL FUNDS Wells Fargo Bank	(TREASURY)	U.S. T-Note		0.010	0.010	2,825,440.61	2,825,440.61	2,825,440.61
		0.3. 1-11018	-	0.010	0.010		, ,	
						2,825,440.61	2,825,440.61	2,825,440.61
			Portfolio total 7-31-2021			142,200,440.61	142,429,033.42	142,738,899.03
			Portfolio total 6-30-2021		_	152,636,608.24	152,861,353.10	152,888,440.54

# Investment Transactions July 2021

SETTLEMENT DATE	IT DATE DESCRIPTION		RATE YIELD CALLAB		PAR	PRICE	
Various dates	Sweep Account	0.010%	0.010%	N/A	\$ 20,194,698.90	\$20,194,698.90	
Various dates	L.A.I.F.	0.221%	0.221%	N/A	\$ 1,541,916.76	\$1,541,916.76	
7/28/2021	Federal Home Loan Bank Stifel Nicolaus & Co Inc. 4/28/2025 Investment # 21312	0.650%	0.650%	Yes	\$ 4,000,000.00	\$4,000,000.00	
7/29/2021	Federal Home Loan Bank Stifel Nicolaus & Co Inc. 7/29/2026 Investment # 21313	0.900%	0.859%	Yes	\$ 5,000,000.00	\$5,010,000.00	

#### Investment Transactions July 2021

SETTLEMENT DATE	DESCRIPTION	RATE	YIELD	CALLABLE	PAR	PRICE			
MATURITIES / WITHDRAWALS / CALLS									
Various dates	Sweep Account	0.010%	0.010%	N/A	\$28,430,935.84	\$28,430,935.84			
Various dates	L.A.I.F.	0.221%	0.221%	N/A	\$10,741,916.76	\$10,741,916.76			
7/6/2021	Apple Medium Term Note UBS Financial Services 8/4/2021 Called Investment # 21276	1.550%	1.550%	Yes	\$ 2,000,000.00	\$2,000,000.00			

#### City of Orange Investment Portfolio July 31, 2021

#### **Portfolio Performance Measures**

Portfolio		Indexes
Rate of Return:		
Portfolio Effective Rate of Return - for July	0.47%	0.05% 3 month Treasury July Average
Portfolio Effective Rate of Return - for Fiscal Year-to-date	0.47%	0.05% 6 month Treasury July Average
Portfolio Yield to Maturity at 7/31/2021	0.52%	0.07% 1 year Treasury July Average
Total Rate of Return:		
Total Rate of Return - for July (not annualized)	0.19%	0.19% 1-3 Year Treasury IndexTotal Rate of Return for July (not annualized)
Total Rate of Return - for 2021 Y-T-D - (not annualized)	-0.20%	0.06% 1-3 Year Treasury IndexTotal Rate of Return for 2021 Y-T-D (not annualized)
Other:		
Portfolio Weighted-Average Time to Maturity	2.05	Years
Market Value as percent of Portfolio, 7/31/2021	100.22%	
Market Value as percent of Portfolio, 6/30/2021	100.02%	
Federal Agency Securities as percent of Portfolio, 7/31/2021	45.69%	

Portfolio Effective Rate of Return: interest earnings (not receipts) for period divided by average daily balance for period, annualized (multiplied by quotient of 365 divided by days in period). Portfolio Yield to Maturity: weighted-average yield to maturity (or call date, if applicable) for entire portfolio;

in the case of coupon investments, includes an adjustment to the face rate for any premium paid or discount received.

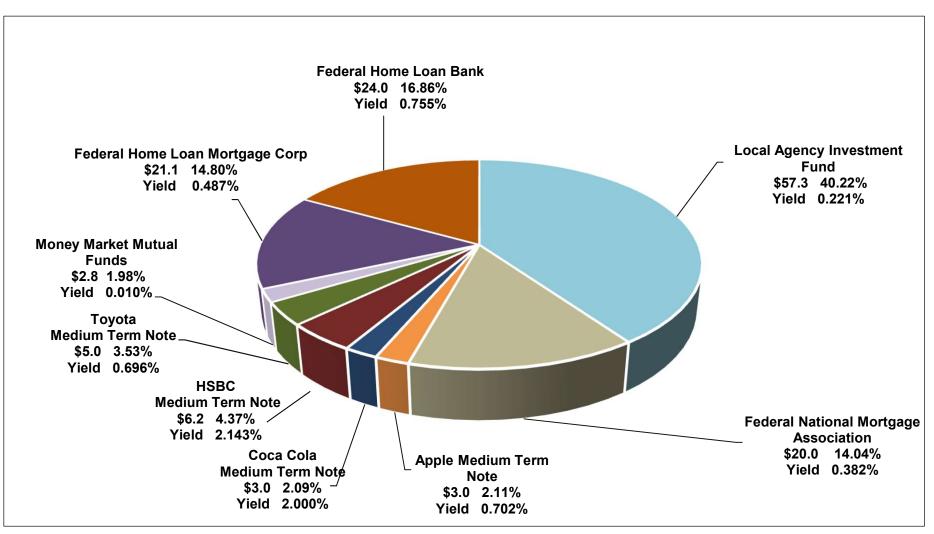
Source of Market Value: ICE Data Pricing and Reference Data provides market value on all instruments.

Total Rate of Return: growth or decline in the value of the portfolio, including both changes in the market value and income, as a proportion of the starting value,

adjusted on a time-weighted basis (per Modified Dietz Method) for cash flows into or out of the portfolio during the period.

The Modified Dietz Method assumes a constant rate of return on the portfolio during the period and is not based on daily valuations.

# City of Orange Investment Portfolio July 31, 2021



# **Total Portfolio \$142,429,033**

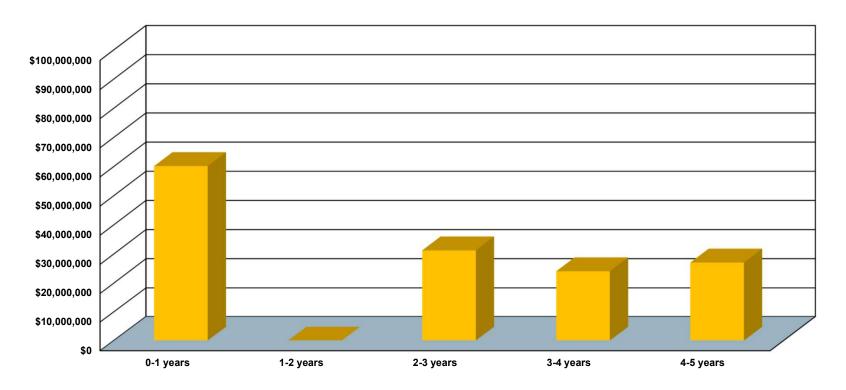
Chart Dollar Values in Millions of Dollars

## City of Orange Investment Portfolio July 31, 2021 Maturity Aging Schedule

Maturing in	Book Value	
0-1 years	60,125,441	42%
1-2 years	0	0%
2-3 years	31,220,543	22%
3-4 years	24,051,870	17%
4-5 years	27,031,179	19%
	\$142,429,033	100%

Weighted-average years to maturity for portfolio =

2.05



#### City of Orange Reconciliation of Total Cash and Investments to General Ledger As of July 31, 2021

Treasurer's Operating Cash and Investments		
Checking, Payroll & PMA - Wells Fargo	272,432	
Treasurer's Investments	142,429,033	
Accrued Interest	569	
Cash in transit	568,720	143,270,754
Imprest Cash		12,200
Fiscal Agent Cash and Investments		34,147,837
Total Cash & Investments	-	177,430,791
Total Cash and Investments per General Ledger <sup>1</sup>		175,782,474
Plus Outstanding Checks		1,648,317
Total Cash & Investments		177,430,791

#### City of Orange Fiscal Agent Investments As of July 31, 2021

	Carrying Value	Market or Contract Value
Fiscal Agent Cash and Investments		
Community Facilities District 91-2 2013 Special Tax Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	1,579,578	1,579,578
Lease Revenue Bonds Series 2020 A First American Government Obligation Fund (0.02%)	30,839,557	30,839,557
Successor Agency 2008A Merged & Amended Tax Allocation Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	2,492	2,492
Successor Agency 2008B Merged & Amended Tax Allocation Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	2	2
Community Facilities District 06-1 2015 Special Tax Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%) US Treasury Bond (4.375%)	1,714,821	1,714,821
Successor Agency 2014A Merged & Amended Tax Allocation Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	1	1
Successor Agency Refunding Bonds 2018A - U.S. Bank First American Government Obligation Fund (0.02%)	2	2
Pension Obligation Bonds	11,384	11,384
First American Government Obligation Fund (0.02%) Total Fiscal Agent Cash and Investments	34,147,837	34,147,837

# 2. Investment Report for August 2021

#### MONTHLY SUMMARY COMPLIANCE CERTIFICATE August 2021

**Note:** All concentration restrictions were obtained from Sections 53601 and 53635 of the Government Code or the City's Investment Policy as of June 8, 2021, whichever was the more stringent.

### 1. U.S. Agencies

L.	U.S. Agencies
	(A) Total amount (book value) of U.S. Agency securities owned by the City = $\frac{60,081,152}{1000}$
	(B) Total amount allowed (75% of portfolio book value) of all City investments = $\$102,455,363$ .
	Is (A) less than (B) at time of purchase? Yes X No
2	Money Market Mutual Funds
<u> </u>	(A) Total amount (book value) invested in money market mutual funds by the City = $$5,009,865$ .
	(B) Total amount allowed (\$15 million or 20% of portfolio book value, whichever is less) of all City investments = <u>\$15,000,000</u>
	Is (A) less than (B)? Yes X No
•	
<u>3.</u>	<u>Medium-Term Notes</u>
	(A) Total amount (book value) invested in medium-term notes by the City = $\$17,216,134$ .
	(B) Total amount allowed (20% of portfolio book value) of all City investments = $\$27,321,430$ .
	Is (A) less than (B) at time of purchase? Yes X No
Λ	Excluded Investment Vehicles
<del>-</del>	(A) Are any securities excluded by the Statement of Investment Policy currently included in the
	City's portfolio?
	Yes NoX
<u>5.</u>	Investment Management Agreements
	(A) Does the City have any investment manager or advisor agreements?
	YesNoX
	(B) If so, was the agreement approved in advance by the City Council?
	Yes No
	(C) If so, has the City examined the methods and past performance of the investment manager?
	Yes No
	(D) If so, pursuant to the agreement, does the City retain authority to make investment decisions?
	Yes No
	(E) If so, pursuant to the agreement, are the investments deposited with the City's custodian?
	Yes No

<u>6.</u>	6. Maturity Limits			
	(A) Does the City currently own any			f five years?
	Yes	5	No <u>X</u>	
	(B) Does the City currently hold no m with maturities between 366 days	and 730 days?	-	s at time of purchase
	Yes	<u>s_X_</u>	No	
	(C) Does the City currently hold no n with maturities between 731 days	and 1095 days?	-	at time of purchase
	Yes	<u>s_X_</u>	No	
	(D) Does the City currently hold no n with maturities between 1096 day	hore than 30% of it ys and 1460 days?	s portfolio in securities	s at time of purchase
	Yes	s <u>X</u>	No	
			-	s at time of purchase
<u>7.</u>	7. Issuer Limits			
	Does each issuer of Money Market M	Iutual Funds conti	nue to meet the follow	ing requirements?
	(i) Is each issuer registered w Investment Company Act of	1940?	-	
	Ye	S	No	N/A <u>X</u>
	(ii) Does the fund of each issuer national rating agencies?		-	
	Yes	S	No	N/AX
	(iii) Has each issuer retained a Exchange Commission with r mutual funds with assets under Yes	not less than five ye	ears' experience manage excess of \$500 million	ging money market

Prepared By:

giephie Cham

Josephine Chan Investment/Revenue Officer Audited By:

Rosario Guzman Accountant

We hereby certify that for the month of August 2021, the investment actions of the City of Orange comply in all respects with the requirements of the California Government Code and the City's current Investment Policy. Additionally, we certify that there is sufficient cash flow to cover the next six months' expenditures barring any catastrophic natural disasters. Market values are obtained through ICE Data Pricing and Reference Data, the State Treasurer's Office, U.S. Trust and U.S. Bank.

Certified By:

Richard A. Rohm

Richard A. Rohm City Treasurer

Verified By:

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William M. Kolbow Assistant City Manager Administrative Services Director

DATED: October 20, 2021

#### City of Orange Investment Portfolio August 31, 2021 (Sorted by TYPE)

BANK / BROKER	PURCHASE DATE	DESCRIPTION	MATURITY DATE	RATE	YIELD	PAR VALUE	BOOK VALUE	MARKET VALUE
(I) LOCAL AGENCY INVESTMENT FUNI	D (LAIF)							
		City	-	0.221	0.221	30,800,000.00	30,800,000.00	30,800,000.00
		OSA	-	0.221	0.221	23,500,000.00	23,500,000.00	23,500,000.00
						54,300,000.00	54,300,000.00	54,300,000.00
(II) FEDERAL HOME LOAN MORTGAGE	CORPORATION							
Stifel Nicolaus & Co Inc.	12/10/2020	FHLMC	3/29/2024	0.350	0.350	5,000,000.00	5,000,000.00	4,999,993.30
Stifel Nicolaus & Co Inc.	11/19/2020	FHLMC	9/25/2024	0.400	0.408	4,575,000.00	4,573,906.75	4,568,907.98
UBS Financial Services	12/17/2020	FHLMC	6/17/2025	0.500	0.500	2,500,000.00	2,500,000.00	2,491,903.15
Stifel Nicolaus & Co Inc.	10/28/2020	FHLMC	10/28/2025	0.600	0.600	9,000,000.00	9,000,000.00	8,967,616.20
						21,075,000.00	21,073,906.75	21,028,420.63
(III) FEDERAL NATIONAL MORTGAGE	ASSOCIATION							
UBS Financial Services	12/29/2020	FNMA	12/29/2023	0.280	0.280	5,000,000.00	5,000,000.00	4,999,392.20
UBS Financial Services	11/20/2020	FNMA	5/17/2024	0.375	0.375	5,000,000.00	5,000,000.00	5,008,614.55
UBS Financial Services	12/14/2020	FNMA	6/14/2024	0.375	0.375	5,000,000.00	5,000,000.00	4,992,450.80
UBS Financial Services	11/20/2020	FNMA	2/18/2025	0.500	0.500	5,000,000.00	5,000,000.00	5,002,302.20
						20,000,000.00	20,000,000.00	20,002,759.75
(IV) FEDERAL HOME LOAN BANK								
Stifel Nicolaus & Co Inc.	3/29/2021	FHLB	3/28/2024	0.350	0.370	5,000,000.00	4,997,422.61	4,997,692.90
Stifel Nicolaus & Co Inc.	7/28/2021	FHLB	4/28/2025	0.650	0.650	4,000,000.00	4,000,000.00	3,999,580.96
Stifel Nicolaus & Co Inc.	5/4/2021	FHLB	4/29/2025	0.750	0.750	5,000,000.00	5,000,000.00	5,001,265.05
Stifel Nicolaus & Co Inc.	7/29/2021	FHLB	7/29/2026	0.900	0.859	5,000,000.00	5,009,822.22	5,002,769.30
						19,000,000.00	19,007,244.83	19,001,308.21
(V) MEDIUM TERM NOTE								
UBS Financial Services	9/20/2019	Coca Cola	9/6/2024	1.750	2.000	3,000,000.00	2,978,585.53	3,118,915.56
UBS Financial Services	12/10/2019	HSBC	6/23/2024	3.500	2.142	6,000,000.00	6,216,777.46	6,469,729.92
Stifel Nicolaus & Co Inc.	11/19/2020	Toyota	10/16/2025	0.800	0.696	5,000,000.00	5,021,010.19	4,972,910.75
Stifel Nicolaus & Co Inc.	2/8/2021	Apple	2/8/2026	0.700	0.702	3,000,000.00	2,999,760.45	2,985,411.09
						17,000,000.00	17,216,133.63	17,546,967.32
(VI) MONEY MARKET MUTUAL FUNDS	(TREASURY)							
Wells Fargo Bank		U.S. T-Note	-	0.010	0.010	5,009,865.22	5,009,865.22	5,009,865.22
						5,009,865.22	5,009,865.22	5,009,865.22
			Portfolio total 8-31-2021		_	136,384,865.22	136,607,150.43	136,889,321.13
			Portfolio total 7-31-2021		_	142,200,440.61	142,429,033.42	142,738,899.03

### Investment Transactions August 2021

SETTLEMENT DATE	DESCRIPTION	RATE	YIELD	CALLABLE	PAR	PRICE		
PURCHASES / DEPOSITS								
Various dates	Sweep Account	0.010%	0.010%	N/A	\$ 13,587,888.38	\$13,587,888.38		
8/30/2021	L.A.I.F.	0.221%	0.221%	N/A	\$ 3,200,000.00	\$3,200,000.00		

### Investment Transactions August 2021

DESCRIPTION	RATE	YIELD	CALLABLE	PAR	PRICE				
MATURITIES / WITHDRAWALS / CALLS									
Sweep Account	0.010%	0.010%	N/A	\$11,403,504.45	\$11,403,504.45				
L.A.I.F.	0.221%	0.221%	N/A	\$6,200,000.00	\$6,200,000.00				
Federal Home Loan Bank UBS Financial Services 5/27/2026 Called Investment # 21310	1.125%	1.125%	Yes	\$ 5,000,000.00	\$5,000,000.00				
	MATURITIES / Sweep Account L.A.I.F. Federal Home Loan Bank UBS Financial Services 5/27/2026	MATURITIES / WITHDRAWA         Sweep Account       0.010%         L.A.I.F.       0.221%         Federal Home Loan Bank       UBS Financial Services 5/27/2026	MATURITIES / WITHDRAWALS / CA         Sweep Account       0.010%       0.010%         L.A.I.F.       0.221%       0.221%         Federal Home Loan Bank       UBS Financial Services 5/27/2026       1.125%	MATURITIES / WITHDRAWALS / CALLS         Sweep Account       0.010%       0.010%       N/A         L.A.I.F.       0.221%       0.221%       N/A         Federal Home Loan Bank       1.125%       1.125%       Yes	MATURITIES / WITHDRAWALS / CALLS         Sweep Account       0.010%       0.010%       N/A       \$11,403,504.45         L.A.I.F.       0.221%       0.221%       N/A       \$6,200,000.00         Federal Home Loan Bank       1.125%       1.125%       Yes       \$ 5,000,000.00				

#### City of Orange Investment Portfolio August 31, 2021

#### **Portfolio Performance Measures**

Portfolio		Indexes
Rate of Return:		
Portfolio Effective Rate of Return - for August	0.52%	0.05% 3 month Treasury August Average
Portfolio Effective Rate of Return - for Fiscal Year-to-date	0.49%	0.05% 6 month Treasury August Average
Portfolio Yield to Maturity at 8/31/2021	0.49%	0.07% 1 year Treasury August Average
Total Rate of Return:		
Total Rate of Return - for August (not annualized)	0.00%	-0.04% 1-3 Year Treasury IndexTotal Rate of Return for August (not annualized)
Total Rate of Return - for 2021 Y-T-D - (not annualized)	-0.20%	0.05% 1-3 Year Treasury IndexTotal Rate of Return for 2021 Y-T-D (not annualized)
Other:		
Portfolio Weighted-Average Time to Maturity	1.91	Years
Market Value as percent of Portfolio, 8/31/2021	100.21%	
Market Value as percent of Portfolio, 7/31/2021	100.22%	
Federal Agency Securities as percent of Portfolio, 8/31/2021	43.98%	

Portfolio Effective Rate of Return: interest earnings (not receipts) for period divided by average daily balance for period, annualized (multiplied by quotient of 365 divided by days in period). Portfolio Yield to Maturity: weighted-average yield to maturity (or call date, if applicable) for entire portfolio;

in the case of coupon investments, includes an adjustment to the face rate for any premium paid or discount received.

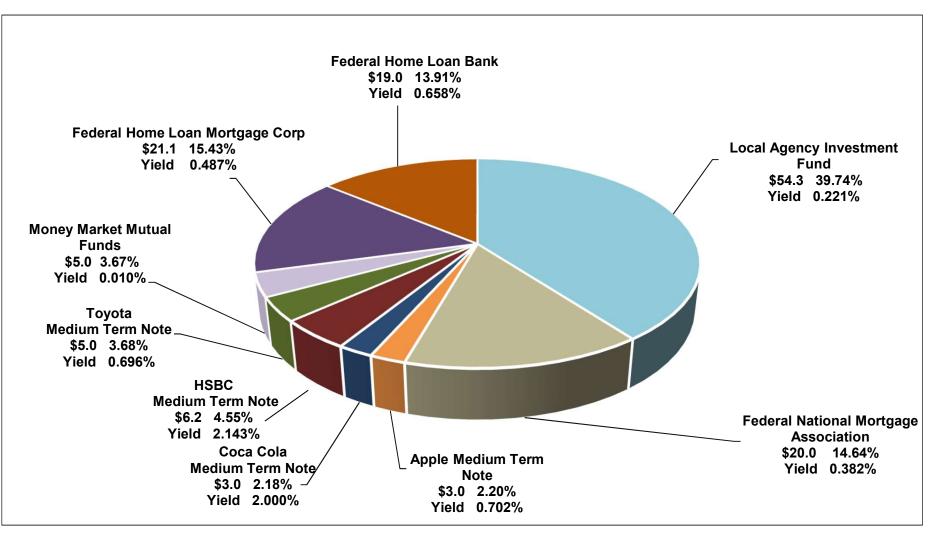
Source of Market Value: ICE Data Pricing and Reference Data provides market value on all instruments.

Total Rate of Return: growth or decline in the value of the portfolio, including both changes in the market value and income, as a proportion of the starting value,

adjusted on a time-weighted basis (per Modified Dietz Method) for cash flows into or out of the portfolio during the period.

The Modified Dietz Method assumes a constant rate of return on the portfolio during the period and is not based on daily valuations.

# City of Orange Investment Portfolio August 31, 2021



# **Total Portfolio \$136,607,150**

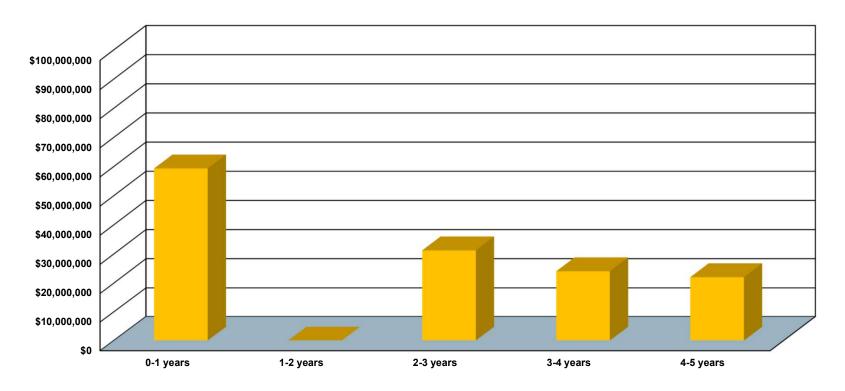
Chart Dollar Values in Millions of Dollars

## City of Orange Investment Portfolio August 31, 2021 Maturity Aging Schedule

Maturing in	Book Value	
0-1 years	59,309,865	43%
1-2 years	0	0%
2-3 years	31,214,200	23%
3-4 years	24,052,492	18%
4-5 years	22,030,593	16%
	\$136,607,150	100%

Weighted-average years to maturity for portfolio =

1.91



#### City of Orange Reconciliation of Total Cash and Investments to General Ledger As of August 31, 2021

Treasurer's Operating Cash and Investments		
Checking, Payroll & PMA - Wells Fargo	485,737	
Treasurer's Investments	136,607,150	
Accrued Interest	569	
Cash in transit	750,583	137,844,039
Imprest Cash		12,200
Fiscal Agent Cash and Investments		36,644,887
Total Cash & Investments	-	174,501,126
Total Cash and Investments per General Ledger <sup>1</sup>		173,710,114
Plus Outstanding Checks		791,012
Total Cash & Investments	-	174,501,126

#### City of Orange Fiscal Agent Investments As of August 31, 2021

	Carrying Value	Market or Contract Value
Fiscal Agent Cash and Investments		
Community Facilities District 91-2 2013 Special Tax Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	1,579,604	1,579,604
Lease Revenue Bonds Series 2020 A First American Government Obligation Fund (0.02%)	28,557,039	28,557,039
Successor Agency 2008A Merged & Amended Tax Allocation Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	2,492	2,492
Successor Agency 2008B Merged & Amended Tax Allocation Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	544,580	544,580
Community Facilities District 06-1 2015 Special Tax Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%) US Treasury Bond (4.375%)	1,740,288	1,740,288
Successor Agency 2014A Merged & Amended Tax Allocation Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	3,754,500	3,754,500
Successor Agency Refunding Bonds 2018A - U.S. Bank First American Government Obligation Fund (0.02%)	455,000	455,000
Pension Obligation Bonds First American Government Obligation Fund (0.02%)	11,384	11,384
Total Fiscal Agent Cash and Investments	36,644,887	36,644,887

# 3. Investment Report for September 2021

#### MONTHLY SUMMARY COMPLIANCE CERTIFICATE September 2021

Note: All concentration restrictions were obtained from Sections 53601 and 53635 of the Government Code or the City's Investment Policy as of June 8, 2021, whichever was the more stringent.

#### 1 TIC Agamai

1.	U.S. Agencies	
	(A) Total amount (book value) of U.S. Agency securities owned by the City = $\underline{\$60,081,098}$ .	
	(B) Total amount allowed (75% of portfolio book value) of all City investments = $\$99,671,744$ .	
	Is (A) less than (B) at time of purchase? Yes X No	
•		
<u>2.</u>	Money Market Mutual Funds	
	(A) Total amount (book value) invested in money market mutual funds by the City = $$5,224,124$	:
	(B) Total amount allowed (\$15 million or 20% of portfolio book value, whichever is less) of	
	all City investments = $\frac{\$15,000,000}{\$1000}$	
	an City investments – $\underline{313,000,000}$	
	Is (A) less than (B)? Yes X No	
3	Medium-Term Notes	
<u></u>	(A) Total amount (book value) invested in medium-term notes by the City = $\$17,209,880$ .	
	(A) Total amount (book value) invested in medium-term notes by the City $= \frac{917,209,000}{917,209,000}$ .	
	(B) Total amount allowed (20% of portfolio book value) of all City investments = $\underline{\$26,579,132}$ .	
	Is (A) less than (B) at time of purchase? Yes X No	
4.	Excluded Investment Vehicles	
	(A) Are any securities excluded by the Statement of Investment Policy currently included in the	
	City's portfolio?	
	Yes NoX	
5	Investment Management Agreements	
<u>J.</u>	(A) Does the City have any investment manager or advisor agreements?	
	YesNoX	
	(D) If $a_1 a_2 a_3 a_4 a_5 a_5 a_5 a_5 a_5 a_5 a_5 a_5 a_5 a_5$	
	(B) If so, was the agreement approved in advance by the City Council?	
	Yes No	
	(C) If so, has the City examined the methods and past performance of the investment manager?	
	(C) If so, has the City examined the methods and past performance of the investment manager? Yes No	
	Yes No	,
	<ul> <li>Yes No</li> <li>(D) If so, pursuant to the agreement, does the City retain authority to make investment decisions?</li> </ul>	?
	Yes No	?
	(D) If so, pursuant to the agreement, does the City retain authority to make investment decisions? Yes No	?
	<ul> <li>Yes No</li> <li>(D) If so, pursuant to the agreement, does the City retain authority to make investment decisions?</li> </ul>	?

#### 6. Maturity Limits

	(A) Does the City currently own any security with a m		ss of five years?
	Yes	NO <u>X</u>	
	(B) Does the City currently hold no more than 50% of with maturities between 366 days and 730 days?	•	ities at time of purchase
	Yes_X	No	
	(C) Does the City currently hold no more than 35% of with maturities between 731 days and 1095 days?	-	ities at time of purchase
	1000000000000000000000000000000000000	No	
	(D) Does the City currently hold no more than 30% of with maturities between 1096 days and 1460 days	its portfolio in secur ?	ities at time of purchase
	Yes_ <u>X</u>	No	
	(E) Does the City currently hold no more than 30% of a with maturities between 1461 days and 1825 days Yes X	?	ities at time of purchase
<u>7.</u>	7. Issuer Limits Does each issuer of Money Market Mutual Funds com	tinue to meet the fol	lowing requirements?
	(i) Is each issuer registered with the Securitie Investment Company Act of 1940?	es and Exchange (	Commission under the
	Yes	No	N/A <u>X</u>
	(ii) Does the fund of each issuer carry the highes national rating agencies?	-	-
	Yes	No	N/A <u>X</u>
	(iii) Has each issuer retained an investment ad Exchange Commission with not less than five mutual funds with assets under management in	years' experience ma	anaging money market
	Yes		

921

Prepared By:

ire Chan feish

Josephine Chan Investment/Revenue Officer

Audited By:

Rosario Guzman Accountant

We hereby certify that for the month of September 2021, the investment actions of the City of Orange comply in all respects with the requirements of the California Government Code and the City's current Investment Policy. Additionally, we certify that there is sufficient cash flow to cover the next six months' expenditures barring any catastrophic natural disasters. Market values are obtained through ICE Data Pricing and Reference Data, the State Treasurer's Office, U.S. Trust and U.S. Bank.

Certified By:

Richard A. Rohm

Richard A. Rohm City Treasurer

Verified By:

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William M. Kolbow Assistant City Manager Administrative Services Director

DATED: October 20, 2021

#### City of Orange Investment Portfolio September 30, 2021 (Sorted by TYPE)

BANK / BROKER	PURCHASE DATE	DESCRIPTION	MATURITY DATE	RATE	YIELD	PAR VALUE	BOOK VALUE	MARKET VALUE
(I) LOCAL AGENCY INVESTMENT FUND	D (LAIF)							
()	(,	City	-	0.206	0.206	23,900,000.00	23,900,000.00	23,900,000.00
		OSA	-	0.206	0.206	23,500,000.00	23,500,000.00	23,500,000.00
						47,400,000.00	47,400,000.00	47,400,000.00
(II) FEDERAL HOME LOAN MORTGAGE	CORPORATION							
Stifel Nicolaus & Co Inc.	12/10/2020	FHLMC	3/29/2024	0.350	0.350	5,000,000.00	5,000,000.00	5,003,632.85
Stifel Nicolaus & Co Inc.	11/19/2020	FHLMC	9/25/2024	0.400	0.408	4,575,000.00	4,573,936.46	4,562,095.30
UBS Financial Services	12/17/2020		6/17/2025	0.500	0.500	2,500,000.00	2,500,000.00	2,484,586.08
Stifel Nicolaus & Co Inc.	10/28/2020		10/28/2025	0.600	0.600	9,000,000.00	9,000,000.00	8,901,070.38
						21,075,000.00	21,073,936.46	20,951,384.61
III) FEDERAL NATIONAL MORTGAGE	ASSOCIATION							
UBS Financial Services	12/29/2020	FNMA	12/29/2023	0.280	0.280	5,000,000.00	5,000,000.00	4,996,717.35
UBS Financial Services	11/20/2020	FNMA	5/17/2024	0.375	0.375	5,000,000.00	5,000,000.00	5,001,207.55
UBS Financial Services	12/14/2020	FNMA	6/14/2024	0.375	0.375	5,000,000.00	5,000,000.00	4,987,634.00
UBS Financial Services	11/20/2020	FNMA	2/18/2025	0.500	0.500	5,000,000.00	5,000,000.00	4,988,151.10
						20,000,000.00	20,000,000.00	19,973,710.00
IV) FEDERAL HOME LOAN BANK								
Stifel Nicolaus & Co Inc.	3/29/2021	FHLB	3/28/2024	0.350	0.370	5,000,000.00	4,997,506.02	4,995,725.60
Stifel Nicolaus & Co Inc.	7/28/2021	FHLB	4/28/2025	0.650	0.650	4,000,000.00	4,000,000.00	3,991,543.68
Stifel Nicolaus & Co Inc.	5/4/2021	FHLB	4/29/2025	0.750	0.750	5,000,000.00	5,000,000.00	4,998,172.35
Stifel Nicolaus & Co Inc.	7/29/2021	FHLB	7/29/2026	0.900	0.859	5,000,000.00	5,009,655.56	4,978,897.70
						19,000,000.00	19,007,161.58	18,964,339.33
V) MEDIUM TERM NOTE								
UBS Financial Services	9/20/2019	Coca Cola	9/6/2024	1.750	2.000	3,000,000.00	2,979,177.63	3,109,532.49
UBS Financial Services	12/10/2019	HSBC	6/23/2024	3.500	2.142	6,000,000.00	6,210,351.26	6,439,049.52
Stifel Nicolaus & Co Inc.	11/19/2020	Toyota	10/16/2025	0.800	0.696	5,000,000.00	5,020,585.74	4,933,577.50
Stifel Nicolaus & Co Inc.	2/8/2021	Apple	2/8/2026	0.700	0.702	3,000,000.00	2,999,764.95	2,965,468.95
						17,000,000.00	17,209,879.58	17,447,628.46
(VI) U.S. TREASURY								
Stifel Nicolaus & Co Inc.	9/30/2021	U.S. T-Note	9/30/2026	0.875	1.001	3,000,000.00	2,980,557.53	2,982,423.00
						3,000,000.00	2,980,557.53	2,982,423.00
(VII) MONEY MARKET MUTUAL FUNDS	(TREASURY)							
Wells Fargo Bank		U.S. T-Note	-	0.010	0.010	5,224,123.98	5,224,123.98	5,224,123.98
						5,224,123.98	5,224,123.98	5,224,123.98
			Portfolio total 9-30-2021			132,699,123.98	132,895,659.13	132,943,609.38
			Portfolio total 8-31-2021		—	136.384.865.22	136,607,150.43	136.889.321.13

#### Investment Transactions September 2021

SETTLEMENT DATE	DESCRIPTION	RATE	YIELD	CALLABLE	PAR	PRICE	
	PURCHASES / DEPOSITS						
Various dates	Sweep Account	0.010%	0.010%	N/A	\$ 14,425,887.37	\$14,425,887.37	
9/27/2021	L.A.I.F.	0.206%	0.206%	N/A	\$ 3,500,000.00	\$3,500,000.00	
9/30/2021	U.S. Treasury Stifel Nicolaus & Co Inc. 9/30/2026 Investment # 21314	0.875%	1.001%	N/A	\$ 3,000,000.00	\$2,980,547.00	

### Investment Transactions September 2021

SETTLEMENT DATE	DESCRIPTION	RATE	YIELD	CALLABLE	PAR	PRICE		
	MATURITIES / WITHDRAWALS / CALLS							
Various dates	Sweep Account	0.010%	0.010%	N/A	\$14,211,661.36	\$14,211,661.36		
Various dates	L.A.I.F.	0.206%	0.206%	N/A	\$10,400,000.00	\$10,400,000.00		

#### City of Orange Investment Portfolio September 30, 2021

#### **Portfolio Performance Measures**

Portfolio		Indexes
Rate of Return:		
Portfolio Effective Rate of Return - for September	0.51%	0.04% 3 month Treasury September Average
Portfolio Effective Rate of Return - for Fiscal Year-to-date	0.50%	0.05% 6 month Treasury September Average
Portfolio Yield to Maturity at 9/30/2021	0.51%	0.07% 1 year Treasury September Average
Total Rate of Return:		
Total Rate of Return - for September (not annualized)	-0.22%	-0.09% 1-3 Year Treasury IndexTotal Rate of Return for September (not annualized)
Total Rate of Return - for 2021 Y-T-D - (not annualized)	-0.41%	-0.05% 1-3 Year Treasury IndexTotal Rate of Return for 2021 Y-T-D (not annualized)
Other:		
Portfolio Weighted-Average Time to Maturity	2.03	Years
Market Value as percent of Portfolio, 9/30/2021	100.04%	
Market Value as percent of Portfolio, 8/31/2021	100.21%	
Federal Agency Securities as percent of Portfolio, 9/30/2021	45.21%	

Portfolio Effective Rate of Return: interest earnings (not receipts) for period divided by average daily balance for period, annualized (multiplied by quotient of 365 divided by days in period). Portfolio Yield to Maturity: weighted-average yield to maturity (or call date, if applicable) for entire portfolio;

in the case of coupon investments, includes an adjustment to the face rate for any premium paid or discount received.

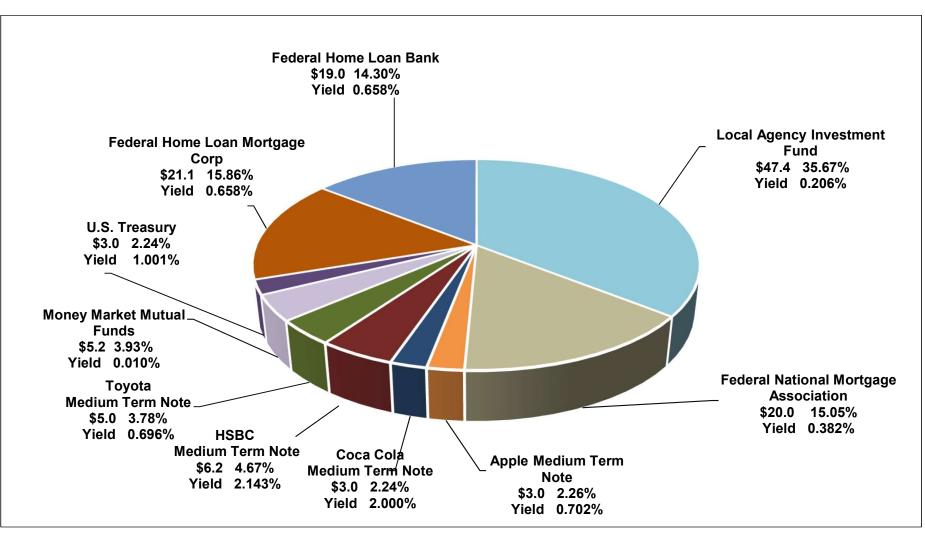
Source of Market Value: ICE Data Pricing and Reference Data provides market value on all instruments.

Total Rate of Return: growth or decline in the value of the portfolio, including both changes in the market value and income, as a proportion of the starting value,

adjusted on a time-weighted basis (per Modified Dietz Method) for cash flows into or out of the portfolio during the period.

The Modified Dietz Method assumes a constant rate of return on the portfolio during the period and is not based on daily valuations.

# City of Orange Investment Portfolio September 30, 2021



## **Total Portfolio \$132,895,659**

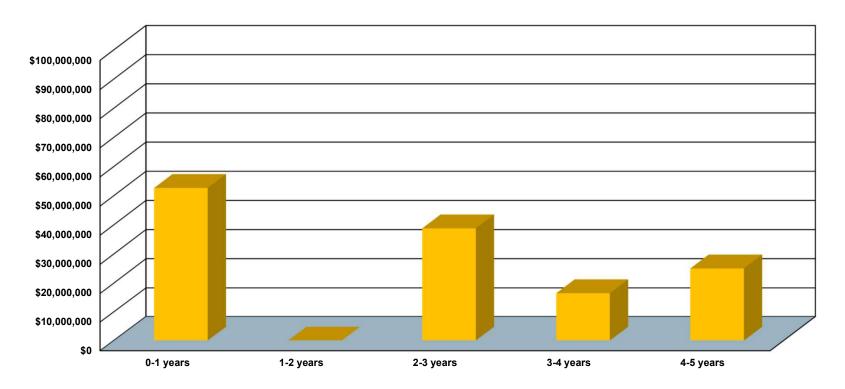
Chart Dollar Values in Millions of Dollars

### City of Orange Investment Portfolio September 30, 2021 Maturity Aging Schedule

Maturing in	Book Value	
0-1 years	52,624,124	40%
1-2 years	0	0%
2-3 years	38,760,971	29%
3-4 years	16,500,000	12%
4-5 years	25,010,564	19%
	\$132,895,659	100%

Weighted-average years to maturity for portfolio =

2.03



#### City of Orange Reconciliation of Total Cash and Investments to General Ledger As of September 30, 2021

Treasurer's Operating Cash and Investments		
Checking, Payroll & PMA - Wells Fargo	327,244	
Treasurer's Investments	132,895,659	
Accrued Interest	521	
Cash in transit	(2,363,099)	130,860,325
Imprest Cash		12,200
Fiscal Agent Cash and Investments	-	34,709,760
Total Cash & Investments	-	165,582,285
	-	
Total Cash and Investments per General Ledger <sup>1</sup>		163,581,001
Plus Outstanding Checks	-	2,001,284
Total Cash & Investments	_	165,582,285

#### **City of Orange** Fiscal Agent Investments As of September 30, 2021

	Carrying Value	Market or Contract Value
Fiscal Agent Cash and Investments		
Community Facilities District 91-2 2013 Special Tax Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	3,521,857	3,521,857
Lease Revenue Bonds Series 2020 A First American Government Obligation Fund (0.02%)	28,557,527	28,557,527
Successor Agency 2008A Merged & Amended Tax Allocation Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	2,493	2,493
Successor Agency 2008B Merged & Amended Tax Allocation Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	3	3
Community Facilities District 06-1 2015 Special Tax Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%) US Treasury Bond (4.375%)	2,616,485	2,616,485
Successor Agency 2014A Merged & Amended Tax Allocation Refunding Bonds - U.S. Bank First American Government Obligation Fund (0.02%)	10	10
Successor Agency Refunding Bonds 2018A - U.S. Bank First American Government Obligation Fund (0.02%)	1	1
Pension Obligation Bonds First American Government Obligation Fund (0.02%)	11,384	11,384
Total Fiscal Agent Cash and Investments	34,709,760	34,709,760



# Agenda Item

City Council

ltem #: 3.26. 11/9/2021		File #: 21-0563
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Monica Espinoza, Human Resources Director	

#### 1. SUBJECT

Classification, compensation, and terms of employment of Part-Time and Seasonal employees. Resolution No. 11359.

#### 2. SUMMARY

Resolution No. 11359 amends the compensation and terms of employment for the City's Part-Time and Seasonal employees for the period of July 1, 2021 through June 30, 2022.

#### 3. RECOMMENDED ACTION

Adopt Resolution No. 11359. A Resolution of the City Council of the City of Orange relating to the classification, compensation, and terms of employment for Part-Time and Seasonal employees of the City of Orange effective July 1, 2021, through and including June 30, 2022, and repealing Resolution No. 11280 and amendments thereto.

#### 4. FISCAL IMPACT

The total annual increase in General Fund costs for the proposed adjustments is \$272,000 with an increase of \$151,000 for Fiscal Year 2021-2022.

#### 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

Goal 4: Provide outstanding public service

e: Attract, retain and develop quality employees dedicated to public service.

#### 6. DISCUSSION AND BACKGROUND

Employees covered by the City's Part-Time and Seasonal Resolution are considered unrepresented and therefore do not bargain collectively for salary, benefits, and other terms and conditions of employment.

In late 2016, former Governor Jerry Brown signed into law Senate Bill 3, gradually raising California's minimum wage from \$10.50 per hour in 2017 to \$15.00 per hour by 2022. The next and final increase to minimum wage attached to this Bill takes effect January 1, 2022, when the minimum

#### 11/9/2021

wage will rise from the current \$14.00 per hour to \$15.00 per hour.

Ten of our part-time classifications are currently paid less than the new minimum wage. Staff therefore recommends adjusting salary levels for those impacted positions with an effective date of December 5, 2021 to comply with the new State minimum wage. Staff is further recommending addressing the salary of other classifications to ensure pay rates are competitive in an effort to recruit and retain quality employees, and to address salary compaction between classifications within job families that has occurred because of the five (5) required minimum wage increases since 2017.

The proposed increases will assist the City in its efforts to attract and recruit quality candidates, which has become increasingly difficult in the last 18 months. This recruiting difficulty is in large part due to private employers offering competitive hourly wages that exceed the minimum wage amount for entry-level positions in a highly competitive general labor market.

There are currently 85 part-time and seasonal employees (FTE 47.893) on payroll who are covered by this Resolution. With a few exceptions, the vast majority of these employees serve in positions that are either temporary, seasonal (summer only), or part-time with a work schedule of 19 hours per week or less. The following changes would be implemented if Council approves the attached Resolution.

- Wage Increases
  - a) Aquatics Series: Pool Manager (from \$20.40 to \$23.58), Assistant Pool Manager (from \$18.47 to \$21.34), Lifeguard/Swim Instructor (from \$16.71 to \$19.31), and Swimming Attendant (from \$14.03 to \$15.05).
  - b) Engineering Intern (from \$14.03 to \$17.05).
  - c) Management Intern (from \$14.03 to \$17.05).
  - d) Parks and Recreation Series: Park Maintenance Helper (from \$14.03 to \$15.05), Recreation Services Leader I (from \$14.03 to \$15.05), Recreation Services Leader II (from \$14.75 to \$16.63), Recreation Services Leader III (from \$16.30 to \$18.37), Parks and Facilities Attendant (from \$16.30 to \$18.37), Recreation Services Activity Specialist (from \$20.40 to \$23.58), and Assistant Recreation Services Coordinator (from \$22.54 to \$26.05).
  - e) Police Cadet Series: Police Cadet I (from \$14.03 to \$17.05) and Police Cadet II (from \$14.75 to \$18.84).
  - f) Police Reserve Officer III: (from \$14.61 to \$15.05).
  - g) Parking Control Officer I (from \$15.82 to \$18.10).
  - h) Police Academy Trainee (from \$5,541/month to \$5,824/month).
  - i) School Crossing Guard Series: School Crossing Guard (from \$14.03 to \$17.05) and School Crossing Guard Supervisor (from \$15.90 to \$20.82).
- Medical Insurance

Effective the first pay period in January 2022, increase the City's contribution toward medical insurance benefits per employee by \$25.00 per month for single coverage, \$50.00 per month for 2-party coverage, and \$75.00 per month for family coverage. No increase to the waiver amounts.

## 7. ATTACHMENTS

• Resolution No. 11359



# Agenda Item

City Council

ltem #: 3.26. 11/9/2021		File #: 21-0563	
TO:	Honorable Mayor and Members of the City Council		
THRU:	Thomas R. Hatch, Interim City Manager	as R. Hatch, Interim City Manager	
FROM:	Monica Espinoza, Human Resources Director		

#### 1. SUBJECT

Classification, compensation, and terms of employment of Part-Time and Seasonal employees. Resolution No. 11359.

#### 2. SUMMARY

Resolution No. 11359 amends the compensation and terms of employment for the City's Part-Time and Seasonal employees for the period of July 1, 2021 through June 30, 2022.

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Effective the first pay period in January 2022, increase the City's contribution toward medical insurance benefits per employee by \$25.00 per month for single coverage, \$50.00 per month for 2-party coverage, and \$75.00 per month for family coverage. No increase to the waiver amounts.

## 7. ATTACHMENTS

• Resolution No. 11359

#### **RESOLUTION NO. 11359**

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE RELATING TO THE CLASSIFICATION, COMPENSATION, AND TERMS OF EMPLOYMENT FOR PART-TIME AND SEASONAL EMPLOYEES OF THE CITY OF ORANGE EFFECTIVE JULY 1, 2021 THROUGH AND INCLUDING JUNE 30, 2022 AND REPEALING RESOLUTION NO. 11280 AND AMENDMENTS THERETO.

WHEREAS, the City Council of the City of Orange wishes to set forth the wages, hours and conditions of employment for July 1, 2021 through June 30, 2022 for the employees described herein, and

**WHEREAS**, the City Council has consulted with the City Manager and Human Resources Director concerning the proposed employment terms contained herein;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Orange hereby adopts the wages, hours and conditions of employment for the period of July 1, 2021 through June 30, 2022 for Part-Time and Seasonal Employees contained in Appendix A, as fully set forth herein.

**ADOPTED** this 9<sup>th</sup> day of November 2021.

Mark A. Murphy, Mayor, City of Orange

#### ATTEST:

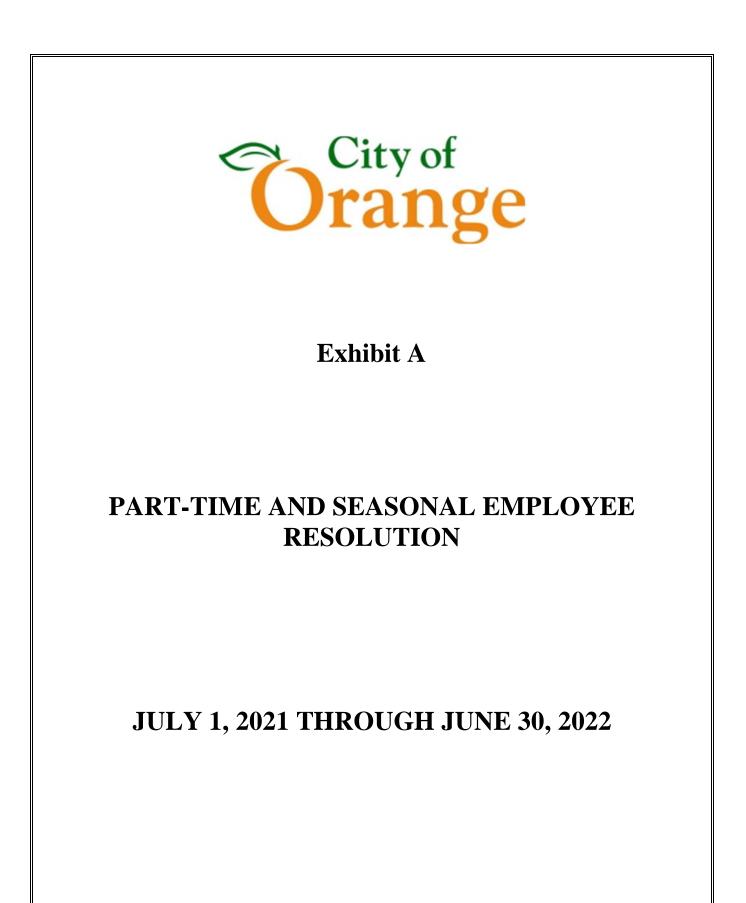
Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA	)
COUNTY OF ORANGE	)
CITY OF ORANGE	)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the 9<sup>th</sup> day of November 2021 by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

Pamela Coleman, City Clerk, City of Orange



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**SECTION 1. BASIC COMPENSATION PLAN AND DEFINITIONS.** A basic compensation plan is established for Part-Time and Seasonal Employees of the City of Orange who are now employed or will in the future be employed in any of the classifications of employment listed in this Resolution and its Appendix. Nothing contained herein shall guarantee to any employee a specified number of hours per day or days per week or weeks per month or months per year of work.

- A. Whenever the term "part-time" is used in this Resolution, it shall be understood to include an employee regularly scheduled to work less than the full-time equivalent of forty (40) hours in a week or less than 2,080 hours in a fiscal year.
- B. Whenever the term "seasonal" is used in this Resolution, it shall be understood to include an employee who is appointed to a limited duration position which may offer recurring periodic employment, such as every summer, but that does not exceed 1,000 hours in a fiscal year.
- C. Whenever the term "temporary" is used in this Resolution, it shall be understood to include an employee who is appointed to a position for a limited duration not to exceed 1,000 hours in a fiscal year.
- D. Whenever the term "probationary employee" is used in this Resolution, it shall be understood to be an employee regularly scheduled to work at least twenty (20) hours per week, but less than forty (40) hours per week on a year-round basis initially appointed or promoted to a classification serving a probationary period during which time the employee shall have an opportunity to demonstrate suitability for the job.
- E. Whenever the term "regular employee" is used in this Resolution, it shall be understood to be an employee regularly scheduled to work at least twenty (20) hours per week, but less than forty (40) hours per week on a year-round basis who has successfully completed a probationary period.
- F. Whenever the term "at-will" is used in this Resolution, it shall be understood to include all parttime employees scheduled to work nineteen (19) hours or less per week, probationary employees, and all seasonal employees. The City reserves the right to terminate the employment relationship at any time, with or without cause, for at-will employees.
- G. When the term "benefited" is used in this Resolution, it shall be understood to include only the part-time employees regularly scheduled to work an average of twenty (20) hours per week, but less than forty (40) per work week on a year-round basis. Benefited employees shall be entitled to receive the fringe benefits acknowledged in this Resolution.
- H. When the term "non-benefited" is used in this Resolution, it shall be understood to include the part-time, seasonal and/or temporary employees working less than 1,000 hours in a fiscal year. Non-Benefited employees shall not be entitled to receive any fringe benefits provided for in this Resolution or in any resolution of the City, unless otherwise provided by Federal and/or State law.
- I. As an exception to the statements and definitions used in this Section and this Resolution, Police Academy Trainee is a temporary, full-time classification eligible for the fringe benefits provided by this Resolution for benefited employees.

**SECTION 2. SALARY AND WAGE SCHEDULES.** Salaries effective December 6, 2020 for employees covered by this Resolution are listed in Appendix A.

**SECTION 3. BEGINNING RATES.** A new employee of the City shall be paid the rate shown in Step A in the range assigned to the classification for which the employee has been hired, except that on request of the Department Head under whom the employee will serve, and with the authorization of the Human Resources Director, such employee may be placed at any step depending the employee's qualifications.

**SECTION 4. SERVICE.** The word "service" as used in this Resolution shall be defined to mean continuous, service in an employee's present classification, service in a higher classification, or service in a classification allocated to the same salary range and having generally similar duties and requirements.

A lapse of service by any employee for a period of time longer than thirty (30) calendar days by reason of resignation or discharge shall serve to eliminate the accumulated length of service time of such employee for the purpose of this Resolution. An employee re-entering the service of the City shall be considered as a new employee, except that the employee may be re-employed within one (1) year and placed in the same salary step in the appropriate compensation range as the employee was at the time of the termination of employment. For seasonal employees, service shall be consecutive seasonal employment with the City.

**SECTION 5. PERFORMANCE EVALUATIONS.** The City shall maintain an employee performance rating system designed to give a fair evaluation of the quantity and quality of work performed by an employee.

- A. Performance evaluation reports shall be prepared and recorded in the employee's personnel file for all probationary part-time, regular part-time, and seasonal employees as follows:
  - 1) For probationary part-time employees, at or near the completion of 1,040 hours and upon the completion of the probationary period at 2,080 hours.
  - 2) For regular part-time employees, at or near the completion of every 2,080 hours after the successful completion of the probationary period.
  - 3) For seasonal employees, at the end of the season and upon the completion of 2,080 hours.
- B. Prior to the performance evaluation report becoming part of the employee's personnel file, the supervisor and the employee must review the evaluation.
- C. When a performance evaluation is recorded in the employee's personnel file a copy of the evaluation shall be given to the employee.

**<u>SECTION 6. ADVANCEMENT WITHIN SALARY RANGES.</u>** The following regulations shall govern salary advancements within ranges for employees in Appendix A:

- A. <u>Merit Advancement.</u> An employee shall be considered for advancement through the salary range based on continuous, meritorious, and efficient service, continued improvement by the employee in the effective performance of the duties of the position, and the completion of 2,080 hours of service in the classification. A merit increase shall become effective on the first (1<sup>st</sup>) day of the next pay period following the completion of the length of service required for such advancement, and shall require the following:
  - 1) The Department Head in the department which the employee is employed shall file with the Human Resources Director a Personnel Action Form and a completed Performance

Evaluation Form recommending the granting or denial of the merit increase and supporting such recommendation with specific reasons therefore. If denied by the Human Resources Director, the reason(s) for denial will be provided to the Department Head.

- B. <u>Special Merit Advancement</u>. When an employee demonstrates exceptional ability and proficiency in the performance of duties, the Department Head may recommend to the Human Resources Director that said employee be advanced to a higher pay step without regard to the minimum length of service provisions contained in this Resolution. The Human Resources Director may, on the basis of a Department Head's recommendation, approve and effect such an advancement.
- C. <u>Length of Service Required When Advancement is Denied.</u> When an employee is not approved for advancement to the next higher salary step, the employee may be reconsidered for such advancement at any subsequent time. This reconsideration shall follow the same steps and shall be subject to the same action as provided in Subsection 6A.

**SECTION 7. REDUCTION IN SALARY STEPS.** Any employee who is paid on a salary step higher than Step A may be reduced by one (1) or more steps upon the recommendation of the Department Head with the approval of the Human Resources Director. Procedure for such reduction shall follow the same procedure as outlined for merit advancement in Section 6, and such employee may be considered for readvancement under the same provisions as contained in Section 6.

**SECTION 8. PROBATION.** An employee scheduled in the duly adopted budget to work at least twenty (20) hours per week on a year-round basis initially appointed or promoted to a classification shall serve a probationary period during which time the employee shall have an opportunity to demonstrate suitability for the job. Employees regularly scheduled twenty (20) hours or more per week shall serve a probationary period of twenty-six (26) consecutive pay periods. Under certain conditions, with approval of the Human Resources Director, the Department Head may extend the probationary period. The employee shall attain regular status in the classification upon successful completion of the probationary period.

Employees serving an initial probationary period are not eligible to compete for a closed/promotional recruitment process.

**SECTION 9. PROMOTION.** When an employee is promoted to a position in a higher classification, the employee may be assigned to the step in the new salary range which provides for at least a five percent (5%) increase. With the approval of the Department Head and Human Resources Director, the employee may be placed in the step in the new salary range as will grant the employee an increase of at least one (1), but not more than three (3) salary steps, at the discretion of the Department Head and the Human Resources Director.

**SECTION 10. DEMOTION.** When an employee is demoted to a position in a lower classification, the salary rate shall be fixed in the appropriate salary range for the lower classification in accordance with the following provisions:

- A. The salary rate shall be reduced by at least one (1) step; and
- B. The new salary rate must be within the salary range for the classification to which demoted.

**SECTION 11. REASSIGNMENT OF COMPENSATION RANGES.** Any employee who is employed in a classification which is allocated to a different pay range shall retain the same salary step in the new range as previously held in the prior range, and shall retain credit for length of service acquired in the previously held step toward advancement to the next higher step in the new salary range; provided, however:

- A. That if such retention shall result in the advancement of more than one (1) step, the Human Resources Director may, at the time of reassignment, place the employee in a step which will result in an increase of only one (1) step.
- B. That if the reassignment is to a lower compensation range, the B or C Step of which shall be lower than the existing rate of pay at the time of reassignment, the employee shall continue to be paid at the existing rate of pay until such time as the new classification shall be reassigned to a compensation schedule which will allow for further salary advancement, or until such time as the employee is promoted to a position assigned to a higher compensation range.
- C. That if the reassignment is to a lower compensation range, the B or C Step of which is higher than the existing rate of pay of the employee, the employee shall be placed on that step of the lower compensation range which is equivalent to the employee's existing rate of pay. If there is no equivalent rate of pay, the employee shall be placed on the next highest step. The employee shall retain credit for length of service previously acquired in such step toward advancement to the next higher step.

**SECTION 12. WORKING OUT OF CLASS.** The City may work employees out of classification for up to fourteen (14) consecutive working days without additional compensation. An employee shall receive acting time pay at A Step of the higher class, or five percent (5%) above the employee's regular salary, whichever is greater, for work performed in the higher classification on the 15<sup>th</sup> consecutive day out of class, and for each consecutive day thereafter an employee works out of class. The Department Head or a duly authorized designee shall assign the employee to work out of classification but shall notify the Human Resources Director prior to the assignment.

During the fourteen (14) consecutive working day eligibility period before an employee is entitled to receive acting time pay, absence for compensatory time and/or vacation shall break consecutiveness and cause the fourteen (14) consecutive working day eligibility period to start over. Absences for regularly scheduled holidays, regular days off, jury duty, and/or verifiable sick leave shall not constitute a break in consecutiveness or acting pay eligibility.

A. <u>Temporary Upgrade Pay.</u> When an employee is working out of classification due to an incumbent's approved leave of absence, said employee shall receive Temporary Upgrade Pay. Temporary Upgrade Pay, as defined by California Code of Regulations 571(a)(3), is "compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration."

The above form of compensation shall be reported to CalPERS as special compensation and therefore compensation earnable. However, Temporary Upgrade Pay will not be reported to CalPERS as pensionable compensation for "New Members" hired on or after January 1, 2013, as defined by the Public Employees' Pension Reform Act of 2013 (PEPRA).

B. <u>Out-of-Class Appointment.</u> Out-of-class appointments shall only be made for positions vacated due to voluntary resignation, promotion, demotion or termination. Government Code Section 20480 of the Public Employees' Retirement Law (PERL) defines an "out-of-class appointment" to mean an appointment to an upgraded position or higher classification by an employer or governing board or body in a vacant position for a limited duration. For purposes of this Section, a "vacant position" refers to a position that is vacant during recruitment for a permanent appointment. A vacant position does not refer to a position that is temporarily available due to another employee's leave of absence.

#### SECTION 13. OVERTIME/COMPENSATORY TIME.

- A. <u>COMPENSATORY TIME</u>. A benefited employee covered by this Resolution shall be entitled to compensatory time for all hours worked in excess of forty (40) hours within the employee's Fair Labor Standards Act (FLSA) work period. Compensatory time shall be accumulated at the rate of one-quarter (<sup>1</sup>/<sub>4</sub>) hour of compensatory time for each one-quarter (<sup>1</sup>/<sub>4</sub>) hour of overtime worked.
- B. <u>PREMIUM (TIME AND ONE-HALF) OVERTIME.</u> Only time actually worked (i.e., not holiday, vacation, sick leave, or compensatory time) over forty (40) hours in an FLSA work period shall be paid at the premium rate (time and one-half) either in the form of pay or compensatory time. FLSA exempt seasonal employees are not entitled to receive premium overtime compensation.
- C. <u>COMPENSATORY TIME ACCUMULATION</u>. Compensatory time shall be accumulated to the nearest one-quarter (<sup>1</sup>/<sub>4</sub>) hour increment. Where a benefited employee works less than one-quarter (<sup>1</sup>/<sub>4</sub>) hour per day of overtime, the employee shall not receive compensatory time, and such time shall not count toward the computation of overtime.
- D. <u>ELIGIBILITY</u>. In order to be entitled to compensatory time, such compensatory time must be authorized by the Department Head or a duly authorized designee.
- E. <u>MAXIMUM COMPENSATORY TIME ACCRUAL</u>. A benefited employee shall not be entitled to accumulate compensatory time in excess of eighty (80) hours during any calendar year. Any accumulated compensatory time accrued in excess of eighty (80) hours per calendar year shall be automatically paid on the first (1<sup>st</sup>) pay period of the new calendar year.

#### F. <u>USE OF COMPENSATORY TIME.</u>

- 1) <u>Payment of Compensatory Time</u>. Compensatory time shall be paid at the regular rate of pay or equal time off, when authorized by the Department Head or a duly authorized designee.
- 2) <u>Payment Upon Termination</u>. Employees shall be entitled to receive payment for all accumulated compensatory time upon their termination or upon promotion into another bargaining unit.

**SECTION 14. CALL BACK COMPENSATION.** If benefited employees are required to report back to work after completing a normal work shift and have left the City premises and/or work location, they shall be compensated in cash or as compensatory time off at the straight time rate for the actual hours of work with a minimum of two (2) hours call back compensation, regardless of whether the employee works

less than two (2) hours. This provision shall be applicable to employees although the employee's regular work week is not completed, but shall not apply to employees who are continuing on duty.

**SECTION 15. HOLIDAYS.** Benefited employees covered by this Resolution shall receive paid holidays, based upon proration of their employment status if less that a full-time employee.

- 1) January 1<sup>st</sup> (New Year's Day)
- 2) Third Monday in February (Presidents' Day)
- 3) Last Monday in May (Memorial Day)
- 4) July 4<sup>th</sup> (Independence Day)
- 5) First Monday in September (Labor Day)
- 6) November 11<sup>th</sup> (Veterans' Day)
- 7) Fourth Thursday in November (Thanksgiving Day)
- 8) Fourth Friday in November (Day after Thanksgiving)
- 9) One-half day (4.5 hours) before Christmas if December 24<sup>th</sup> falls on a Monday through Thursday (Christmas Eve)
- 10) December 25<sup>th</sup> (Christmas Day)
- A. <u>HOLIDAYS ON CERTAIN DAYS OF THE WEEK.</u> In the event any of the above holidays, except one-half (<sup>1</sup>/<sub>2</sub>) day before Christmas, fall on a Sunday, the following day will be taken in lieu of the actual date on which the holiday falls. When any of the above holidays fall on a Saturday, except one-half (<sup>1</sup>/<sub>2</sub>) day before Christmas, the preceding day will be taken in lieu of the actual date on which the holiday falls. When any of the above holidays fall on an employee's regularly scheduled day off, except one-half (<sup>1</sup>/<sub>2</sub>) day before Christmas, forty (40) hour benefited employees will be credited with nine (9) hours of holiday compensatory time. Benefited employees will receive holiday pay for the holidays in this Section based upon the employee's full-time equivalency from the current Personnel Action Form. Accumulated holiday compensatory time must be used by the employee by June 30<sup>th</sup> of the same fiscal year in which it was accumulated no be forfeited. In addition, employees shall be entitled to receive payment for all accumulated holiday compensatory time upon their termination or upon promotion into another bargaining unit.
- B. <u>ELIGIBILITY TO RECEIVE HOLIDAY PAY.</u> In order to be eligible to receive holiday pay, a benefited employee must have worked, or be deemed to have worked because of an approved absence (e.g., sick leave, vacation, or compensatory time), the benefited employee's regularly scheduled day before and regularly scheduled day after the holiday. Probationary benefited employees are provided with and are eligible to use floating holiday hours, according to the guidelines established in this Section, and/or with approval of the Human Resources Director.
- C. <u>HOLIDAY DURING VACATION</u>. Should any of the holidays listed above fall during an employee's vacation period, or while an employee is on an excused absence with pay, the employee shall receive holiday pay and no charge shall be made against the employee's accumulated vacation.
- D. <u>FLOATING HOLIDAY</u>. Notwithstanding the above, floating holiday hours shall be taken at the convenience of the City with approval of the Department Head or a duly authorized designee. For purposes of this benefit, employees will have credited nine (9) hours of floating holiday as of January 1<sup>st</sup>. Benefited employees will receive floating holiday hours in this Section based upon the employee's full-time equivalency from the current Personnel Action Form. This floating holiday shall be taken as time off from work no later than December 31<sup>st</sup> of the same year. The

floating holiday is not accumulative and shall be forfeited should it not be taken during the year it was earned. Benefitted employees under this Section who are promoted to another bargaining unit or who terminate their employment with the City prior to using the floating holiday shall receive cash reimbursement for said holiday.

E. <u>COMPENSATION FOR HOURS WORKED ON OBSERVED CITY HOLIDAYS</u>. All benefited employees required to work on a holiday listed above, with the approval of their supervisor, shall receive holiday pay plus straight time pay for hours worked on the holiday, or time off equal to the number of hours the employee actually worked on the holiday. Benefited employees who work in excess of their regular number of hours on a holiday listed above, shall receive double time pay for all such hours actually worked. Employees shall receive no other compensation whatsoever for working on a holiday.

#### SECTION 16. VACATION.

A. <u>VACATION ACCRUAL</u>. Benefited employees who have one (1) year's continuous service, shall receive the following vacation hours per year, based upon proration of their employment status if less than a full-time employee.

Years of Service	Vacation Hours Per Year
1 thru 4	80
5 thru 10	120
11	128
12	136
13	144
14	152
15 thru 24	160
25 or more	200

- B. <u>VACATION USAGE AND ACCUMULATION</u>. Vacation shall be taken at the convenience of the City with the approval of the Department Head or a duly authorized designee. Where possible, such vacation should be taken annually and not accumulated from year to year. Vacation hours not in excess of the equivalent number of hours earned in the immediately preceding twenty-four (24) month period may be accumulated with the permission of the Department Head and the Human Resources Director. Employees shall not accumulate vacation in excess of the equivalent number of hours earned in the immediately preceding twenty-four (24) month period. All vacation hours in excess of the equivalent number of hours earned in the immediately preceding twenty-four (24) month period not taken by the employee shall be forfeited. Probationary benefited employees accrue vacation, but may not use vacation until successful completion of an initial probation period, except in the event of a City Hall holiday closure, with approval of the Human Resources Director.
- C. <u>VACATION CONVERSION</u>. An employee may convert up to fifty percent (50%) of their current annual vacation accrual into pay in lieu of time off with pay. An employee requesting such a conversion must meet the eligibility requirements as set forth in Subsection 16B and may so convert once during each fiscal year.

A benefited employee may convert up to fifty percent (50%) of current annual vacation accrual into cash in lieu of time off with pay. A benefited employee requesting such a conversion must

meet the eligibility requirements as set forth in this Section, and may so convert twice in a fiscal year, however the total amount converted per fiscal year shall not exceed fifty percent (50%) of the employee's annual accrual. Employees serving their initial probationary period shall not be eligible for vacation conversion.

D. <u>VACATION PAY-OUT UPON TERMINATION</u>. Eligible employees who terminate their employment with the City shall be paid for all accrued vacation, if any, and the prorated portion of their final accrual. Prorated vacation shall be on the basis of one-twelfth (1/12) of the employee's annual vacation pay for each full month of service.

#### SECTION 17. ELIGIBILITY FOR FRINGE BENEFITS.

- A. <u>ENTITLEMENT TO FRINGE BENEFITS UPON PRORATION OF HOURS</u>. Benefited employees shall receive fringe benefits based upon the employee's full-time equivalency from the current Personnel Action Form. This formula of proration shall apply to holiday pay, vacation, sick leave, medical insurance contribution, disability insurance contribution, and retirement contribution.
- B. <u>NON-BENEFITED EMPLOYEES.</u> Non-benefited employees shall not be entitled to receive any fringe benefits provided for in this Resolution or in any resolution of the City, unless otherwise provided by Federal and/or State law.

#### SECTION 18. LEAVES OF ABSENCE.

- A. <u>LEAVE OF ABSENCE WITHOUT PAY.</u> For all regular employees as described herein, the following Leave Without Pay procedure shall apply:
  - 1) After all available leave benefits, including vacation, compensatory time, sick leave, and other leave benefits have been completely used, a regular employee, not under suspension, may make written application to the Department Head for leave without pay. No such leave will be considered absent a written application from the employee requesting leave.
  - If the Department Head and the Human Resources Director agree that such leave is merited and in the interest of the City, leave may be granted for a period not to exceed six (6) months following the date of expiration of all other allowable leave benefits.
  - 3) No employment or fringe benefits such as sick leave, vacation, health insurance, retirement, or any other benefits shall accrue to any employee on leave of absence without pay except as denoted under the Family and Medical Leave Act (FMLA) Section below. During such leave in excess of five (5) working days, no seniority shall be accumulated.
  - 4) Subject to and consistent with the conditions of the group health, life or disability plan, coverage may be continued during a leave, provided direct payment of the total premium by the employee is made through and as prescribed by the Payroll Division of the City. The City will pay up to six (6) months of the Flexible Benefit Plan contribution for employees who are on long term disability leave.

- 5) At the end of such leave, if the employee desires additional leave, written application must be made through the Department Head to the Human Resources Director at least ten (10) days before the end of the six (6) month period, stating the reasons why the additional leave is required and why it would be in the best interests of the City to grant such leave of absence. If such additional leave is merited and would still preserve the best interests of the City, the Human Resources Director may approve such extension of the leave of absence for a period up to but not to exceed an additional six (6) months.
- 6) If the employee does not return to work prior to or at the end of such leave of absence or extension of leave of absence, the City shall consider that the employee has terminated employment with the City.
- 7) An employee on leave must give the City at least seven (7) days' written notice of intent to return to work prior to returning to work.
- 8) Any employee who engages in outside employment during said leave of absence without prior notification and approval of the Human Resources Director and Department Head may be subject to termination.
- 9) Any employee who falsifies the reason for the request for said leave of absence may be terminated for falsifying a request for leave of absence or extension thereof.
- 10) Such leave shall be granted on the same basis for pregnancy, childbirth, and other medically related conditions, except that such an employee shall retain his seniority rights.
- 11) Forms setting forth the benefits available and other pertinent information shall be maintained for distribution in the Human Resources Department.
- B. <u>MILITARY LEAVE OF ABSENCE.</u> If a benefited employee is deployed or required to attend military training, the employee shall be entitled to military leave of absence under the provisions of State law found in applicable sections of the California Military and Veterans' Code. Employees must provide a copy of their military orders to the Human Resources Department to qualify for military leave of absence. Any exceptions to this provision shall be considered on a case-by-case basis, with final approval of the Human Resources Director.
- C. <u>SICK LEAVE</u>. Sick leave with pay shall be allowed, credited, and accumulated in accordance with the following:
  - 1) For employees working a regular forty (40) hour week, eight (8) hours of sick leave will accrue for each month of continuous service. Sick leave for benefited part-time employees will be prorated under this Section based upon the employee's full-time equivalency from the current Personnel Action Form. Probationary employees may use accrued sick leave during their probation period.
  - 2) All non-benefited employees shall receive sick leave as required by State law.
  - 3) Sick leave will be charged at the rate of one-quarter (¼) hour for each one-quarter (¼) hour an employee is absent.

- 4) Any employee eligible for sick leave with pay may use such leave for the following reasons:
  - i. Medical and dental office appointments during work hours when authorized by the Department Head or a duly authorized designee; and/or
  - ii. Personal illness or physical incapacity resulting from causes beyond the employee's control, including pregnancy, childbirth and other medically related conditions.
  - iii. For an employee who is a victim of domestic violence, sexual assault, or stalking, for the purposes described in Labor Code sections 230(c) and 230.1(a).
  - iv. <u>Family Leave</u>. In accordance with the California Family Leave Act, all benefited employees may use up to one-half (½) of their annual sick leave accrual, per calendar year, for family leave purposes.
- 5) <u>Sick Leave Application</u>. Sick leave may be applied only to absence caused by illness or injury of an employee and may not extend to absence caused by illness or injury of a member of the employee's family except as provided in Subsection 18C(6) below.
- 6) <u>Sick Leave Charged.</u> In any instance involving use of a fraction of a day's sick leave, the minimum charged to the employee's sick leave account shall be one-quarter (¼) hour, while additional actual absence of over one-quarter (¼) hour shall be charged to the nearest one-half (½) hour. Sick leave shall only be used for the purposes stated, and the Department Head shall be responsible for control of employee abuse of sick leave. Employees may, upon prior notice, be required to furnish a certificate issued by a licensed physician or nurse or other satisfactory written evidence of any subsequent illness.
- Maximum Accumulation of Sick Leave. Employees shall be allowed to accumulate sick leave to a maximum of 960 hours. Sick leave hours in excess of such maximum shall be forfeited.
- 8) <u>Retirement from City Service and Entering the Public Employees' Retirement System.</u> Upon retiring from City service and entering the Public Employees' Retirement System as a Retired Annuitant, an employee shall receive no pay for the first sixty (60) days of accrued sick leave (0 to 480 hours), but shall receive twenty-five percent (25%) pay for the first thirty (30) days of accrued sick leave after the first sixty (60) days of accrued sick leave (481 to 720 hours), and fifty percent (50%) of all accrued sick leave thereafter (721 hours to 960 hours).
- 9) <u>Death of an Employee.</u> Upon the death of an employee while employed by the City, 100% of all accrued sick leave benefits shall be paid to the beneficiary of the deceased employee. Payment will be made when proper authorization for payment is received from the estate of the decedent employee.

- D. <u>FAMILY LEAVE.</u> In accordance with the California Family Sick Leave and Paid Sick Leave Acts, employees are allowed up to one-half (½) of their annual accrual of sick leave per calendar year for family related illness or injury, which shall be charged against the employee's accumulated sick leave. Family as used in this Subsection is limited to any relation by blood, marriage, or adoption who is a member of the employee's household (living at the same address); and any parent, substitute parent, parent-in-law, spouse, registered domestic partner, child, brother, sister, grandchild or grandparent of the employee, regardless of place of residence. Benefited parttime employees are allowed to use up to one-half (½) of their annual accrual of sick leave
- E. <u>BEREAVEMENT LEAVE.</u> Benefited employees shall be entitled to take up to three (3) days of paid bereavement leave per incident on the following terms and conditions:
  - 1) Bereavement leave may only be used upon the death, or critical illness where death appears to be imminent, in the employee's immediate family. "Immediate family" as used in this Subsection, shall be limited to any relation by blood, marriage or adoption, who is a member of the employee's household (living at the same address) and any parent, legal guardian, parent-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, spouse, child, brother, sister, or registered domestic partner of the employee regardless of residence.
  - 2) Days of absence due to bereavement leave shall not exceed three (3) working days per incident and shall not be deducted from the employee's accumulated sick leave. An employee on bereavement leave shall inform his immediate supervisor of the fact and the reasons therefore as soon as possible. Failure to inform his immediate supervisor, within a reasonable period of time, may be cause for denial of bereavement leave with pay for the period of absence.
- F. <u>WORKERS' COMPENSATION.</u> Employees who incur a work-related injury or illness will be eligible to receive Workers' Compensation benefits according to the State of California's Division of Workers' Compensation laws and regulations.
  - 1) <u>Temporary Disability.</u> An employee shall be granted Temporary Disability in accordance with the current State Workers' Compensation laws and regulations.
  - 2) Should it be determined by the treating physician, or the employee's doctor, or an agreed doctor by both parties, or an Administrative Law Judge through the Workers' Compensation Appeals Board, that an employee's illness or injury did not arise in the course of the employee's employment with the City and/or that the employee is not temporarily incapacitated, then the employee's accrued, or if insufficient, future sick leave, shall be charged to reimburse the City for any payments made to the employee.
  - 3) If eligible, a benefited employee receiving Temporary Disability benefits will continue to receive the City's contribution to the employee's medical, dental, vision and other applicable insurances. All authorized deductions will continue as though the employee is on regular work status. If the employee has exhausted Temporary Disability benefits, the employee shall be responsible for paying the full premium for the employee's medical, dental, vision, and other applicable insurances.

4) Before a work-related injury, an employee may elect to pre-designate a qualified medical provider if done in accordance with Workers' Compensation laws and regulations.

**SECTION 19. LIFE INSURANCE.** The City shall contribute the full premium towards a \$40,000.00 life insurance policy for each benefited employee.

**SECTION 20. LONG-TERM DISABILITY INSURANCE.** The City shall contribute the full premium toward a long-term disability plan covering eligible benefited employees that pays sixty percent (60%) of salary after a sixty (60) day elimination period, up to a maximum benefit of \$3,000.00 per month.

**SECTION 21. HEALTH BENEFITS.** The City contracts with the California Public Employees' Retirement System (CalPERS) to make available those health insurance benefits provided under the Public Employees' Medical and Hospital Care Act (PEMHCA).

A. <u>FLEXIBLE BENEFITS PLAN.</u> The City shall provide a Section 125 Flexible Benefits Plan for active full-time and part-time benefited employees and pay the following monthly amounts to provide funds for optional health plans, dental plans, vision plans, health care reimbursement, dependent care, or cash as established by the Internal Revenue Service. The following amounts include the minimum amount required under PEMHCA, which is \$143.00 per month (\$149.00 for 2022). This contribution shall be adjusted annually each January 1<sup>st</sup> to the amount set by the CalPERS Board of Administration.

<b>Effective Date</b>	Single	2-Party	Family
January 1, 2021	\$910.00	\$1,335.00	\$1,610.00
January 1, 2022	\$935.00	\$1,385.00	\$1,685.00

- B. Any costs in excess of the amounts designated in Subsection 21A necessary to maintain benefits under any benefit plans selected by the employee shall be borne by the employee.
- C. An employee cannot be enrolled in the CalPERS Health Benefits Plan if a spouse is enrolled in the same agency or enrolled in an agency with CalPERS Health, unless the employee (or the spouse) is enrolled without being covered as a family member.
- D. An employee may choose to not be enrolled in a CalPERS Health Benefits Plan. If an employee chooses not to be enrolled, the employee must provide proof of group medical insurance coverage (e.g., coverage under a spouse's employer's plan) that is complaint with the Affordable Care Act (ACA), as determined by the Human Resources Director. Based on determination that group medical insurance coverage is in full force and effect, employees hired prior to January 1, 2020 shall receive \$785.00 per month toward the Flexible Benefits Plan. Employees hired after January 1, 2020 who elect to waive the City's medical insurance shall receive \$400.00 per month.
- E. In the event the benefited employee loses eligibility (with documentation) the employee may enroll in the CalPERS Health Benefits Plan pursuant to their rules and regulations. Failure to do so within sixty (60) days, shall result in the City seeking reimbursement of said contributions.
- F. <u>RETIRED ANNUITANT CONTRIBUTION</u>. The City shall contribute toward the payment of the premiums under the CalPERS Health Benefits Plan to each eligible retired annuitant of

CalPERS to the extent required by law, a contribution of \$143.00 per month (\$149.00 for 2022). This contribution shall be adjusted annually each January 1<sup>st</sup> to the amount set by the CalPERS Board of Administration.

G. The City Manager reserves the right to adjust the flexible benefits plan contributions for employees covered by the Resolution at any time during the life of this Resolution to reflect insurance contributions provided to employees in the Orange Municipal Employees' Association (OMEA) unit.

#### SECTION 22. RETIREMENT.

- A. <u>NON-BENEFITED EMPLOYEES.</u> All non-benefited employees not covered under the CalPERS shall participate in a defined contribution retirement plan in lieu of Social Security contributions. The City shall contribute three and three-fourths percent (3.75%) of the employee's eligible earnings toward the retirement plan. Employees shall contribute three and three-fourths percent (3.75%) of their eligible earnings toward the retirement plan.
- B. <u>NEW MEMBERS.</u> Miscellaneous employees who are New Members of CalPERS as defined by California Government Code Section 7522.04(f) are subject to the 2% @ age 62 retirement formula as set forth in California Government Code Section 7522.20. The New Members are subject to the three (3) year final compensation measurement period as set forth in California Government Code Section 7522.32. These New Members shall contribute half of normal cost of retirement as determined by CalPERS from their pensionable compensation, on a pre-tax basis, as set forth in California Government Code Section 7522.30. In all other respects, New Members shall be subject to the terms and requirements of PEPRA.
- C. <u>CLASSIC MEMBERS.</u> Miscellaneous employees who are not defined as New Members as outlined in Section B above are defined as Classic Members of CalPERS and are subject to the 2.7% @ age 55 retirement formula set forth on Section 21362.2 of the California Government Code. These Classic Members are subject to the one year final compensation measurement period set forth in California Government Code Section 20042. These Classic Members shall contribute eight percent (8%) of their compensation earnable, on a pre-tax basis.
- D. <u>1959 CALPERS SURVIVOR BENEFIT</u>. The City provides the 1959 CalPERS Survivor Benefit at the Fourth Level Option (California Government Code Section 21574) for all covered employees. Employees shall pay their \$2.00 monthly contribution through payroll deduction. The City shall pay the employer portion subject to the following limit: in the event the employer portion exceeds \$6.00 monthly, employees shall pay any portion of the employer portion that exceeds \$6.00 monthly.

**SECTION 23. DIRECT DEPOSIT.** City employees are required to participate in the City's direct paycheck deposit program.

#### SECTION 24. GRIEVANCE PROCEDURE.

A. <u>DEFINITION OF GRIEVANCE.</u> A grievance shall be defined as a timely complaint by an employee or group of employees concerning the interpretation or application of specific provisions of this Resolution of the Rules and Regulations governing personnel practices or working

conditions of the City. Grievances shall not include disciplinary actions taken against "At-Will" employees.

- B. <u>BUSINESS DAYS.</u> Business days means those days in which the City's administrative offices are open.
- C. <u>TIME LIMITS FOR FILING WRITTEN FORMAL GRIEVANCES.</u> The time limits for filing written formal grievances shall be strictly construed, but may be extended by mutual agreement evidenced, in writing, and signed by a duly authorized designee of the City and the grieving party. Failure of the grieving party to comply with any of the time limits set forth hereunder shall constitute waiver and bar further processing of the grievance. Failure of the City to comply with the time limits set forth in this Section shall automatically move the grievance to the next level in the Grievance Procedure.
- D. <u>INFORMAL GRIEVANCE PROCESS.</u> An employee must first attempt to resolve a grievance on an informal basis by discussion with an immediate supervisor without undue delay. Every effort shall be made to find an acceptable solution to the grievance by these informal means at the most immediate level of supervision. At no time may the informal process go beyond the division head concerned. In order that this informal procedure may be responsive, all parties involved shall expedite this process. In no case may more than ten (10) business days elapse from the date of the alleged incident giving rise to the grievance, or when the grievant knew or should have reasonably become aware of the facts giving rise to the grievance and the filing of a written formal grievance with the Human Resources Director of the City, with a copy to the Department Head in which the employee works. Should the grievant fail to file a written grievance within ten (10) business days from the date of the incident giving rise to the grievance, or when grievance within ten (10) business days from the date of the incident giving rise to the grievance, or when grievance within ten (10) business days from the date of the incident giving rise to the grievance, or when grievant knew or should have reasonably become aware of the facts giving rise to the grievance, the grievance shall be barred and waived.
- E. FORMAL GRIEVANCE PROCESS, HUMAN RESOURCES DIRECTOR, DEPARTMENT <u>HEAD.</u> If the grievance is not resolved through the informal process, and the written grievance is filed within the time limits set forth above, the grievant shall discuss the grievance with the Human Resources Director and the Department Head within ten (10) business days. The Human Resources Director and the Department Head shall render a decision and comments, in writing, regarding the merits of the grievance and return them to the grievant within five (5) business days after receiving the grievance.
- F. FORMAL GRIEVANCE PROCESS, CITY MANAGER. If the grievance is not resolved in Subsection E above, or if no answer has been received from the Human Resources Director and Department Head within fifteen (15) business days from the presentation of the written grievance to the Human Resources Director and Department Head, the written grievance shall be presented to the City Manager, or a duly authorized designee, within ten (10) business days, for determination. Failure of the grievant to take this action will constitute a waiver and bar to the grievance, and the grievance will be considered settled on the basis of the last Management grievance response. The City Manager, or a duly authorized designee, shall render a final decision on the merits of the grievance and comments, in writing, and return them to the grievant within ten (10) business days after receiving the grievance. After this procedure is exhausted, the grievant and the City shall have rights and remedies to pursue said grievance under the law. The City shall instruct its supervisors on the proper use and implementation of this grievance procedure and every

reasonable effort shall be made by the employee and the supervisor to resolve the grievance at the informal step.

**SECTION 25. TRAVEL EXPENSE ALLOWANCE.** The City has established a Travel and Business Expense Reimbursement policy (Administrative Policy Number 4.13) to reimburse City employees when conducting City business, attending business or professional conferences, training seminars, or other travel on authorized City business.

Any employee who is required to travel in the performance of their duties or to attend an authorized meeting or conference or otherwise incurs expenses relating to the conduct of City business shall be reimbursed for reasonable expenses incurred for transportation, meals, lodging, and incidentals as outlined in the Finance Policy referenced above.

**<u>SECTION 26. EFFECTIVE DATES.</u>** This Resolution shall become effective on July 1, 2021 through June 30, 2022 unless otherwise amended.

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#### APPENDIX A PART-TIME AND SEASONAL SALARY RANGES

#### **EFFECTIVE DECEMBER 6, 2020**

CLASSIFICATION TITLE	RANGE	STEP A	STEP B	STEP C
Assistant Pool Manager	440	18.47	19.41	N/A
Assistant Recreation Services Coordinator	480	22.54	23.70	24.90
Engineering Intern	385	14.03	14.76	15.50
Lifeguard/Swim Instructor	420	16.71	17.57	N/A
Management Intern	385	14.03	14.76	15.50
Parking Control Officer I	409	15.82	16.63	17.48
Parks and Facilities Attendant	415	16.30	17.14	18.01
Parks Maintenance Helper	385	14.03	14.76	15.50
Police Academy Trainee	550	5541.00	<monthly< td=""><td></td></monthly<>	
Police Cadet I	385	14.03	14.76	15.50
Police Cadet II	395	14.75	15.51	16.30
Police Reserve Officer I	453	19.71	20.71	21.76
Police Reserve Officer II	413	16.14	16.97	17.83
Police Reserve Officer III	393	14.61	15.36	16.14
Pool Manager	460	20.40	21.45	22.54
Recreation Services Activity Specialist	460	20.40	21.45	22.54
Recreation Services Leader I	385	14.03	14.76	N/A
Recreation Services Leader II	395	14.75	15.51	N/A
Recreation Services Leader III	415	16.30	17.14	18.01
School Crossing Guard	385	14.03	14.76	15.50
School Crossing Guard Supervisor	410	15.90	16.72	17.56
Swimming Attendant	385	14.03	14.76	N/A

Note: The above salary ranges include salary adjustments of up to 7.5% for classifications impacted by the State Minimum Wage increase effective January 1, 2021, as well as adjustments to protect against salary compaction between classifications.

#### <u>APPENDIX A</u> PART-TIME AND SEASONAL SALARY RANGES (Continued)

#### **EFFECTIVE DECEMBER 5, 2021**

CLASSIFICATION TITLE	RANGE	STEP A	STEP B	STEP C
Assistant Pool Manager	469	21.34	22.43	N/A
Assistant Recreation Services Coordinator	509	26.05	27.38	28.78
Engineering Intern	424	17.05	17.92	18.83
Lifeguard/Swim Instructor	449	19.31	20.30	N/A
Management Intern	424	17.05	17.92	18.83
Parking Control Officer I	436	18.10	19.03	19.99
Parks and Facilities Attendant	439	18.37	19.31	20.30
Parks Maintenance Helper	399	15.05	15.82	16.63
Police Academy Trainee	560	5824.00	<monthly< td=""><td></td></monthly<>	
Police Cadet I	424	17.05	17.92	18.83
Police Cadet II	444	18.84	19.80	20.81
Police Reserve Officer I	453	19.71	20.71	21.76
Police Reserve Officer II	413	16.14	16.97	17.83
Police Reserve Officer III	399	15.05	15.82	16.63
Pool Manager	489	23.58	24.78	26.05
Recreation Services Activity Specialist	489	23.58	24.78	26.05
Recreation Services Leader I	399	15.05	15.82	N/A
Recreation Services Leader II	419	16.63	17.48	N/A
Recreation Services Leader III	439	18.37	19.31	20.30
School Crossing Guard	424	17.05	17.92	18.83
School Crossing Guard Supervisor	464	20.82	21.88	22.99
Swimming Attendant	399	15.05	15.82	N/A

Note: The above salary ranges include salary adjustments of up to 7.27% for classifications impacted by the State Minimum Wage increase effective January 1, 2022, as well as adjustments to resolve salary compaction between classifications.



# Agenda Item

City Council

Item #: 3	.27. 11/9/2021	File #: 21-0582
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Will Kolbow, Assistant City Manager/Administrative Servi	ces Director

# 1. SUBJECT

Adoption of Fiscal Year Ended June 30, 2021, Measure M2 Expenditure Report. Resolution No. 11360.

# 2. SUMMARY

OCTA requires forms for tracking M2 expenditures and net revenues that all public agencies must use in order to be in compliance with the Renewed Measure M Eligibility Guidelines.

# 3. RECOMMENDED ACTION

Adopt Resolution No. 11360. A Resolution of the City Council of the City of Orange concerning the Fiscal Year Ended June 30, 2021, Measure M2 Expenditure Report.

#### 4. FISCAL IMPACT

Adopting Resolution No. 11360 will allow the City to receive Measure M2 funding for transportation projects.

# 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

- b: Analyze future fiscal needs and potential revenue opportunities.
- c. Provide appropriate reserves.

# 6. DISCUSSION AND BACKGROUND

In Fiscal Year 2020-2021, the City received \$3,017,314 in M2 Fairshare funding and \$752,249 in other M2 funding, which includes funding for Comprehensive Transportation and Senior Mobility. The City is required to complete the attached M2 Expenditure Report and submit to the Orange County Transportation Authority for compliance tracking and reporting on an annual basis.

# 7. ATTACHMENTS

- Resolution No. 11360.
- City of Orange M2 Expenditure Report for the Fiscal Year Ended June 30, 2021



# Agenda Item

City Council

ltem #: 3.	.27. 11/9/2021	File #: 21-0582
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Will Kolbow, Assistant City Manager/Administrative Ser	vices Director

# 1. SUBJECT

Adoption of Fiscal Year Ended June 30, 2021, Measure M2 Expenditure Report. Resolution No. 11360.

# 2. SUMMARY

OCTA requires forms for tracking M2 expenditures and net revenues that all public agencies must use in order to be in compliance with the Renewed Measure M Eligibility Guidelines.

# 3. RECOMMENDED ACTION

Adopt Resolution No. 11360. A Resolution of the City Council of the City of Orange concerning the Fiscal Year Ended June 30, 2021, Measure M2 Expenditure Report.

#### 4. FISCAL IMPACT

Adopting Resolution No. 11360 will allow the City to receive Measure M2 funding for transportation projects.

# 5. STRATEGIC PLAN GOALS

Goal 2: Be a fiscally healthy community

- b: Analyze future fiscal needs and potential revenue opportunities.
- c. Provide appropriate reserves.

# 6. DISCUSSION AND BACKGROUND

In Fiscal Year 2020-2021, the City received \$3,017,314 in M2 Fairshare funding and \$752,249 in other M2 funding, which includes funding for Comprehensive Transportation and Senior Mobility. The City is required to complete the attached M2 Expenditure Report and submit to the Orange County Transportation Authority for compliance tracking and reporting on an annual basis.

# 7. ATTACHMENTS

- Resolution No. 11360.
- City of Orange M2 Expenditure Report for the Fiscal Year Ended June 30, 2021

#### **RESOLUTION NO. 11360**

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CONCERNING THE FISCAL YEAR ENDED JUNE 30, 2021 MEASURE M2 EXPENDITURE REPORT FOR THE CITY OF ORANGE

**WHEREAS**, local jurisdictions are required to meet eligibility requirements and submit eligibility verification packages to the Orange County Transportation Authority (OCTA) in order to remain eligible to receive M2 funds; and

**WHEREAS,** local jurisdictions are required to adopt an annual M2 Expenditure Report as part of one of the eligibility requirements; and

**WHEREAS**, local jurisdictions are required to account for Net Revenues, developer/traffic impact fees, and funds expended by local jurisdiction in the M2 Expenditure Report that satisfy the Maintenance of Effort requirements; and

**WHEREAS**, the M2 Expenditure Report shall include all Net Revenue fund balances, interest earned and expenditures identified by type and program or project; and

**WHEREAS**, the M2 Expenditure Report must be adopted and submitted to the OCTA each year within six months of the end of the local jurisdiction's fiscal year to be eligible to receive Net Revenues as part of M2.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Orange does hereby inform OCTA that:

- a) The M2 Expenditure Report is in conformance with the template provided in the Measure M2 Eligibility Guidelines and accounts for Net Revenues including interest earned, expenditures during the fiscal year, and balances at the end of fiscal year.
- b) The M2 Expenditure Report is hereby adopted by the City of Orange.
- c) The City of Orange Finance Director is hereby authorized to sign and submit the M2 Expenditure Report to OCTA for the fiscal year ending June 30, 2021.

ADOPTED this 9th day of November 2021.

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the 9<sup>th</sup> day of November 2021, by the following vote:

AYES:COUNCIL MEMBERS:NOES:COUNCIL MEMBERS:ABSENT:COUNCIL MEMBERS:ABSTAINED:COUNCIL MEMBERS:

Pamela Coleman, City Clerk, City of Orange

#### M2 Expenditure Report Fiscal Year Ended June 30, 2021 Beginning and Ending Balances

Description	Line No.	Amount	Interest
Balances at Beginning of Fiscal Year			
A-M Freeway Projects	1	\$ -	\$-
O Regional Capacity Program (RCP)	2	\$ (810,865.28)	\$ -
P Regional Traffic Signal Synchronization Program (RTSSP)	3	\$ _	\$-
Q Local Fair Share	4	\$ 2,355,219.00	\$ 348,886
R High Frequency Metrolink Service	5	\$ 	\$ -
S :Transit Extensions to Metrolink	6	\$ 	\$ -
Convert Metrolink Station(s) to Regional Gateways that		 	
T connect Orange County with High-Speed Rail Systems	7	\$ -	\$-
U Senior Mobility Program or Senior Non-Emergency Medical Program	8	\$ 189,145.00	\$-
V Community Based Transit/Circulators	9	\$ 	\$-
W Safe Transit Stops	10	\$ 	
X Environmental Cleanup Program (Water Quality)	11	\$ 288,740.00	\$ -
Other*	12	\$ 112,661.00	\$
Balances at Beginning of Fiscal Year	13	\$ 2,134,899.72	\$ 348,886
Monies Made Available During Fiscal Year	14	\$ 3,769,563.23	\$ 1,655
Total Monies Available (Sum Lines 13 & 14)	15	\$ 5,904,462.95	\$ 350,541
Expenditures During Fiscal Year	16	\$ 2,456,931.84	
Balances at End of Fiscal Year		2,100,001.01	
A-M Freeway Projects	17	\$ 	\$ -
O Regional Capacity Program (RCP)	18	\$ (233,386.23)	
	********	 	***************************************
P Regional Traffic Signal Synchronization Program (RTSSP)	19	\$ -	\$ -
Q Local Fair Share	20	\$ 2,989,202.23	\$ 348,886
R :High Frequency Metrolink Service	21	\$ 	\$ -
S Transit Extensions to Metrolink	22	\$ -	\$ -
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	23	\$ -	\$ -
U Senior Mobility Program or Senior Non-Emergency Medical Program	24	\$ 277,422.34	\$-
V Community Based Transit/Circulators	25	\$ 	\$-
W Safe Transit Stops	26	\$ -	\$
X Environmental Cleanup Program (Water Quality)	27	\$ 288,740.00	\$ -
Other*	28	\$ 125,552.77	\$-

\* Please provide a specific description

Description	Line No.		Amount Interest	
Revenues:				
A-M Freeway Projects	1	\$	_	\$
O Regional Capacity Program (RCP)	2	\$	599,501	\$-
P Regional Traffic Signal Synchronization Program (RTSSP)	3	\$	-	\$-
Q Local Fair Share	4	\$	3,017,314	\$-
R High Frequency Metrolink Service	5	\$	-	\$-
S Transit Extensions to Metrolink	6	\$	-	\$-
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	7	\$	-	\$-
U Senior Mobility Program or Senior Non-Emergency Medical Program	8	\$	136,748	
V Community Based Transit/Circulators	9		150,748	\$ 1,655
W Safe Transit Stops	10	\$ \$		\$ \$
X Environmental Cleanup Program (Water Quality)	11			
Other*	12	 	- 16,000	
TOTAL REVENUES (Sum lines 1 to 12)	12	\$ \$	3,769,563	\$ 1,655
Expenditures:		Ş	5,705,505	2 1,022
A-M: Freeway Projects	14	\$		\$ -
O Regional Capacity Program (RCP)	15	\$	22,022	\$ -
P Regional Traffic Signal Synchronization Program (RTSSP)	16	\$		\$ -
<b>Q</b> Local Fair Share	17	\$	2,383,331	\$ -
R High Frequency Metrolink Service	18	\$		\$ -
S Transit Extensions to Metrolink	19	\$		
T Convert Metrolink Station(s) to Regional Gateways that connect Orange County with High-Speed Rail Systems	20	\$	-	\$ -
U Senior Mobility Program or Senior Non-Emergency Medical Program	21	\$	48,471	\$ 1,655
V Community Based Transit/Circulators	22	\$	-	\$ -
W Safe Transit Stops	23	\$		\$ -
X Environmental Cleanup Program (Water Quality)	24	\$		\$ -
¦Other*	25	\$	3,108	\$ -
TOTAL EXPENDITURES (Sum lines 14 to 25)	26	\$	2,456,932	\$ 1,655
TOTAL BALANCE (Subtract line 26 from 13)	27	\$	1,312,631	\$-

\* Project 14040 Main/Chapman to Orangewood Traffic Improvement

# M2 Expenditure Report Fiscal Year Ended June 30, 2021 Streets and Roads Detailed Use of Funds

Type of Expenditure	Line No.	MOE	Developer / Impact Fees <sup>+</sup>	0	0 Interest	<b>Q.</b>	P Interest	ď	Q Interest	×	X Interest	Other M2 <sup>2</sup>	Other M2 Interest	#	Other*	TOTAL
Indirect and/or Overhead	H	\$ 752,613	+ ج	\$	*	- - 	- \$	\$ 523,357	÷	- \$	Ş	- \$ 48,471	\$ 1/1	\$	3,108	\$ 1,327,549
Construction & Right-of-Way																
New Street Construction	2	۔ ج	\$ -	\$ -	- \$	\$ -	÷ -	\$ -	\$ -	- \$	۔ \$	\$	\$ -	, \$	I	÷ ÷
Street Reconstruction	'n		\$ -	- \$	\$ -	ۍ ۲	- \$	\$ 1,672,688	÷	- \$	- \$	\$	\$ -	÷ -		\$ 1,935,026
Signals, Safety Devices, & Street Lights	4	\$ 593,814	ۍ ۲	\$ 22,022	\$	۰ ب	- \$	\$ 187,286	\$ -	- \$	- \$	Ş	\$	\$ -	-	\$ 803,122
Pedestrian Ways & Bikepaths	'n	\$ 40,229	- \$	\$ -	- \$	ۍ ۲	- \$	- \$	\$ -	÷ -	- \$	\$	\$	<del>ب</del>	•	\$ 40,229
Storm Drains	9	\$ 20,115	ۍ ۲	÷	- \$	÷	ۍ خ	۰ ج	- -	- \$	- \$	Ş	¢	ۍ ۲	•	\$ 20,115
Storm Damage	7	- -	\$ -	\$ -	Ş	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	Ş	- \$	- Ş	1	- \$
Total Construction <sup>1</sup>	ø	\$ 916,495	- \$	\$ 22,022	- \$	<del>د</del> -	<del>،</del> \$	\$ 1,859,974	- \$	- \$	- \$	\$	\$ -	\$ -		\$ 2,798,492
Right of Way Acquisition	6		- \$		\$ -	\$ -	\$ -		\$ -	- \$	- \$		\$	\$ -		\$
Total Construction & Right-of-Way	10	\$ 916,495	- \$	\$ 22,022	- \$	۰ ج	- \$	\$ 1,859,974	- \$	- \$	- \$	\$	\$ -	\$ -		\$ 2,798,492
Maintenance																
Patching	11	\$ 420,811	÷	÷ ا	- \$	- \$	- \$	- \$	÷ ۔	- \$	- \$	Ş	\$	\$ -	ì	\$ 420,811
Overlay & Sealing	12	\$ 22,441	ۍ ۲	÷ ۔	۰ ډ	ۍ ۱	- \$	ې ۲	\$	÷ ۔	÷ -	\$	- Ş	\$ •	•	\$ 22,441
Street Lights & Traffic Signals	13	: :	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	- \$	\$ -	÷ -	\$	- \$	\$ -	•	\$ 1,381,494
Storm Damage	14	\$ 22,441	\$ -	<del>،</del> -	- \$	<del>د</del> -	- \$	- \$	\$ -	÷ د	- \$	\$	- \$	\$ -	•	\$ 22,441
	15	\$ 44,882	\$ 1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	- \$	- \$	,	\$ 44,882
Total Maintenance <sup>1</sup>	16	\$ 1,892,069	- \$	- \$	- \$	- \$	\$ -	\$ -	<del>،</del> \$	- \$	- \$	\$	\$ -	\$ -	,	\$ 1,892,069
Other	17		\$ -	\$ -	\$ -	\$ -	\$ -	\$ - '	\$ -	\$ -	\$ -	Ş	\$	1,655 \$	-	\$ 1,655
GRAND TOTALS (Sum Lines 1, 10, 16, 17)	18	\$ 3,561,178	- \$	\$ 22,022	- \$	- \$	- \$	\$ 2,383,331	- \$	- \$	- \$	\$ 48,471	Ş	1,655 \$	3,108	\$ 6,019,765
Finance Director Confirmation	19	Any California State Con The California State Con aware of these guideline Finance Director initial:	Any California State Constitution Article XIX streets and road eligible expenditure may be "counted" in local jurisdict The California State Controller also provides useful information on Article XIX and the Streets and Highways Code el aware of these guidelines and their applicability in calculating and reporting on Maintenance of Effort expenditures. Finance Director initial:	Article XIX stree o provides usef ir applicability i	ts and road eligit ul information on 1 calculating and	ole expenditure ma Article XIX and the reporting on Main	iy be "counted" e Streets and Hig tenance of Effor	in local jurisdictio ¢hways Code eligi t expenditures.	Any California State Constitution Article XIX streets and road eligible expenditure may be "counted" in local jurisdictions' discretionary funds (e.g. general fur The California State Controller also provides useful information on Article XIX and the Streets and Highways Code eligible expenditures in its "Guidelines Relating to Gas Tax Expenditures for Cities and Counties". I have reviewed and am avare of these guidelines and their applicability in calculating and reporting on Maintenance of Effort expenditures. Finance Director initial:	IOE if the activit its "Guidelines	y is supported ( Relating to Gas	(funded) by a Tax Expendi	local jurisdictic tures for Cities :	ans' discre and Coun	tionary funds ties". I have re	gible expenditure may be "counted" in local jurisdictions' calculation of MOE if the activity is supported (funded) by a local jurisdictions' discretionary funds (e.g. general fund). on Article XIX and the Streets and Highways Code eligible expenditures in its "Guidelines Relating to Gas Tax Expenditures for Cities and Counties". I have reviewed and am nd reporting on Maintenance of Effort expenditures.

Includes direct charges for staff time
 Other M2 includes A-M, R,S,T,U,V, and W
 Transportation related only
 Please provide a specific description

bue	
Project	Description,
A-M	Freeway Projects
0	Regional Capacity Program (RCP)
4	Regional Traffic Signal Synchronization Program (RTSSP)
σ	Local Fair Share
ж	High Frequency Metrolink Service
s	Transit Extensions to Metrolink
ł	Convert Metrolink Station(s) to Regional Gateways that connect Orange County with
-	High-Speed Rail Systems
5	Senior Mobility Program or Senior Non-Emergency Medical Program
>	Community Based Transit/Circulators
3	Safe Transit Stops
×	Environmental Cleanup Program (Water Quality)

Legend

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#### M2 Expenditure Report Fiscal Year Ended June 30, 2021 Local Fair Share Project List

PROJECT NAME	AMOUNT EXPENDED
00000 - Contractual Services (Part of Maintenance)	337,721
13115 - Reg Salaries - Misc-Pvmnt Mgt	758
13120 - Pavement Management Program	1,818,391
16302 - Minor Traffic Control Devices - Various	
	75,269
16304 - Biennial Traffic Signal Coordination	5,290
16469 - Traffic Signal Equip Painting	10,000
20383 - Cannon/Serrano Intersection	307
20432 - Project Mgt - Traffic	38,867
30029 - Left turn singal modification	16,747
30030 - Chapman/James Left turn signal	79,980
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	\$ 2,383,331.00

#### M2 Expenditure Report Fiscal Year Ended June 30, 2021

I hereby certify that:

All the information attached herein and included in schedules 1 through 4 is true and accurate to the best of my knowledge;

The interest earned on Net Revenues allocated pursuant to the Ordinance shall be expended only for those purposes for which the Net Revenues were allocated;

The City/County of \_\_\_\_\_\_ is aware of the State Controller's "Guidelines Relating to Gas Tax Expenditures for Cities and Counties", which is a guide for determining MOE Expenditures for M2 Eligibility purposes;

The City/County's Expenditure Report is in compliance with direction provided in the State Controller's "Guidelines Relating to Gas Tax Expenditures for Cities and Counties;" and

The City/County of ORANGE has expended in this fiscal year an amount of local discretionary funds for streets and roads purposes at least equal to one of the maintenance of effort requirements below<sup>10</sup>:

A) The City/County met the existing FY 2020-21 MOE benchmark dollar amount.

B) The City/County met a proportional MOE benchmark amount of FY 2020-21 General Funds Revenues that is at least equal to the percent listed in column C of Exhibit 2 in the M2 Eligibility Guidelines.

Will Kolbow

Director of Finance (Print Name)

<u>|0 - |4 - 71</u> Date

Signature

<sup>10</sup> An actual General Fund Revenue excerpt from a jurisdiction's Comprehensive Annual Finance Report (CAFR) must be provided as backup documentation.



# Agenda Item

City Council

ltem #: 3.2	3. 11/9/2021	File #: 21-0616
то:	Honorable Mayor and Members of the City Council	

THRU: Thomas R. Hatch, Interim City Manager

FROM: Christopher Cash, Public Works Director

# 1. SUBJECT

Authorization to submit a pavement rehabilitation project application to the Orange County Transportation Authority for funding under Pavement Management Relief Funding Program. Resolution No. 11362.

#### 2. SUMMARY

Resolution No. 11362 authorizes the City of Orange to apply for a \$403,299 grant under the Orange County Transportation Authority's Pavement Management Relief Funding Program. The total estimated construction cost, including contingencies and construction engineering (15%), is \$960,000.

# 3. RECOMMENDED ACTION

Adopt Resolution No. 11362. A Resolution of the City Council of the City of Orange approving and authorizing the project list submittal for Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) funding through the Orange County Transportation Authority 2021 Pavement Management Relief funding program.

# 4. FISCAL IMPACT

None.

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

The Orange County Transportation Authority (OCTA) 2021 Pavement Management Relief Funding (PMRF) Program was created as a one-time funding program to provide funding assistance to the cities and the County of Orange for local streets and roads maintenance and rehabilitation projects.

The PMRF Program is intended to help offset the loss of Measure M2 local fair share revenues, SB 1 (Chapter 1, Statutes of 2017) Road Maintenance Rehabilitation account funds, and other state and federal funding programs that support local streets and roads whose revenue streams have been

negatively impacted by the coronavirus pandemic.

The federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA), Title IV of Division M, Public Law 116-260, which was signed into law on December 27, 2020, appropriated \$10 billion for Highway Infrastructure Programs (HIP) through the Federal Highway Administration (FHWA). Of this \$10 billion in HIP funding, \$9.830 billion was apportioned to the states in the same ratio as the distribution of obligation authority. The State of California was apportioned \$911.8 million, of which approximately \$364.7 million, or 40 percent, will be distributed to regional transportation agencies through the California Transportation Commission (CTC). The CTC further split this funding into two programs: the mid-cycle STIP and the CRRSAA Program. The CTC delegated responsibility for program oversight for the CRRSAA regional funds to the California Department of Transportation (Caltrans) Local Assistance through a streamlined state/federal process. OCTA was provided with \$14.591 million in CRRSAA regional funds of which \$3.66 million has already been programmed by the OCTA Board of Directors (Board) to other OCTA priority projects leaving \$10.932 million remaining available for programming. The remaining CRRSAA Program funds are the funds which will support the PMRF Program.

The \$10.932 million that is available through the CTC CRRSAA funding program is being made available by OCTA for the PMRF Program. Funds will be distributed to each local jurisdiction based on population as reported through the California Department of Finance for calendar year 2020 with each agency guaranteed a minimum of \$200,000. No matching funds are required but agencies may choose to use the funds as a contribution to a larger locally funded project. The funding is federal and must follow requirements as established by the CTC, Caltrans, and the FHWA for federal funds.

The Public Works Department has identified Santiago Canyon Road (from Newport Boulevard to Jamboree Road) Street Rehabilitation as a project that meets the criteria for PMRF funding. The total estimated construction cost, including contingencies and construction engineering (15%), is \$960,000. The total grant amount allocated for the City of Orange is \$403,299, and the City will likely utilize local funds for the remaining of total project cost.

#### 7. ATTACHMENTS

- Resolution No. 11362
- Location Map



# Agenda Item

City Council

ltem #: 3.2	3. 11/9/2021	File #: 21-0616
то:	Honorable Mayor and Members of the City Council	

THRU: Thomas R. Hatch, Interim City Manager

FROM: Christopher Cash, Public Works Director

# 1. SUBJECT

Authorization to submit a pavement rehabilitation project application to the Orange County Transportation Authority for funding under Pavement Management Relief Funding Program. Resolution No. 11362.

#### 2. SUMMARY

Resolution No. 11362 authorizes the City of Orange to apply for a \$403,299 grant under the Orange County Transportation Authority's Pavement Management Relief Funding Program. The total estimated construction cost, including contingencies and construction engineering (15%), is \$960,000.

# 3. RECOMMENDED ACTION

Adopt Resolution No. 11362. A Resolution of the City Council of the City of Orange approving and authorizing the project list submittal for Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) funding through the Orange County Transportation Authority 2021 Pavement Management Relief funding program.

# 4. FISCAL IMPACT

None.

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

The Orange County Transportation Authority (OCTA) 2021 Pavement Management Relief Funding (PMRF) Program was created as a one-time funding program to provide funding assistance to the cities and the County of Orange for local streets and roads maintenance and rehabilitation projects.

The PMRF Program is intended to help offset the loss of Measure M2 local fair share revenues, SB 1 (Chapter 1, Statutes of 2017) Road Maintenance Rehabilitation account funds, and other state and federal funding programs that support local streets and roads whose revenue streams have been

negatively impacted by the coronavirus pandemic.

The federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA), Title IV of Division M, Public Law 116-260, which was signed into law on December 27, 2020, appropriated \$10 billion for Highway Infrastructure Programs (HIP) through the Federal Highway Administration (FHWA). Of this \$10 billion in HIP funding, \$9.830 billion was apportioned to the states in the same ratio as the distribution of obligation authority. The State of California was apportioned \$911.8 million, of which approximately \$364.7 million, or 40 percent, will be distributed to regional transportation agencies through the California Transportation Commission (CTC). The CTC further split this funding into two programs: the mid-cycle STIP and the CRRSAA Program. The CTC delegated responsibility for program oversight for the CRRSAA regional funds to the California Department of Transportation (Caltrans) Local Assistance through a streamlined state/federal process. OCTA was provided with \$14.591 million in CRRSAA regional funds of which \$3.66 million has already been programmed by the OCTA Board of Directors (Board) to other OCTA priority projects leaving \$10.932 million remaining available for program.

The \$10.932 million that is available through the CTC CRRSAA funding program is being made available by OCTA for the PMRF Program. Funds will be distributed to each local jurisdiction based on population as reported through the California Department of Finance for calendar year 2020 with each agency guaranteed a minimum of \$200,000. No matching funds are required but agencies may choose to use the funds as a contribution to a larger locally funded project. The funding is federal and must follow requirements as established by the CTC, Caltrans, and the FHWA for federal funds.

The Public Works Department has identified Santiago Canyon Road (from Newport Boulevard to Jamboree Road) Street Rehabilitation as a project that meets the criteria for PMRF funding. The total estimated construction cost, including contingencies and construction engineering (15%), is \$960,000. The total grant amount allocated for the City of Orange is \$403,299, and the City will likely utilize local funds for the remaining of total project cost.

#### 7. ATTACHMENTS

- Resolution No. 11362
- Location Map

#### **RESOLUTION NO. 11362**

A RESOLUTION OF THE CITY COUNCIL OF THE **CITY OF ORANGE APPROVING AND AUTHORIZING** THE PROJECT LIST SUBMITTAL FOR CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT OF 2021 (CRRSAA) FUNDING THROUGH THE ORANGE COUNTY TRANSPORTATION AUTHORITY 2021 PAVEMENT MANAGEMENT RELIEF FUNDING PROGRAM

**WHEREAS**, the City of Orange is being provided \$403,299 in federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) funding through the 2021 Pavement Management Relief Funding (PMRF) Program; and

**WHEREAS**, the City of Orange is eligible to receive federal funding through the California Department of Transportation; and

**WHEREAS**, the Orange County Transportation Authority (OCTA) is responsible for the distribution of the CRRSAA funding; and

**WHEREAS**, OCTA has developed guidelines for administering and distributing CRRSAA funds to eligible local agencies through the 2021 PMRF Program; and

**WHEREAS**, the City of Orange is the lead agency for project(s) and will comply with all applicable local, state, and federal provisions including but not limited to the Federal Transportation Improvement Program, California Environmental Quality Act, National Environmental Policy Act, Americans with Disabilities Act, and Buy America.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Orange hereby authorizes the submittal of the following project nomination to OCTA for CRRSAA funding:

• Santiago Canyon Road (from Newport Boulevard to Jamboree Road) project for \$403,299 in CRRSAA funding,

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the \_ day of \_\_\_\_\_, 2021 by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange

# Location Map



- Parcel Lines
- Curb Type

 $\mathsf{Esri}, \, \mathsf{HERE}, \, \mathsf{Garmin}, \, \mathsf{(c)} \, \mathsf{OpenStreetMap}$  contributors, and the GIS user community

0.15

0.2

0.3 mi

0.4 km

0.075

0.1

0

0



# Agenda Item

**City Council** 

Item #: 3.	.29. 11/9/2021	File #: 21-0622
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Gary A. Sheatz, City Attorney	

# 1. SUBJECT

Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative to repeal SB 9 and SB 10, and restore local control over zoning and land use decisions. Resolution No. 11363.

## 2. SUMMARY

In recent years, the State of California has enacted several laws including Senate Bills 9 and 10 that erode local control over the City's zoning and land use authority. The proposed Brand-Huang-Mendoza Tripartisan Land Use Initiative would restore local control over zoning and land-use decisions by preventing the State from usurping those powers from local governments.

### 3. **RECOMMENDED ACTION**

Adopt Resolution No. 11363. A Resolution of the City Council of the City of Orange Expressing Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative to Amend Article XI of the Constitution of the State of California to Make Zoning and Land Use Community Affairs, and Not of State Interest.

### 4. FISCAL IMPACT

None.

### 5. STRATEGIC PLAN GOALS

Goal 3: Enhance and promote quality of life in the community

c: Support and enhance attractive, diverse living environments.

# 6. DISCUSSION AND BACKGROUND

Over the past few years, the State of California has enacted several laws that usurp local authority over land use decisions. This top-down approach replaces local decision making with state planning that is not responsive to local needs. The imposition of a one-size-fits-all land use policy is ill-suited to a large state of nearly 40 million people living in hundreds of diverse communities.

On March 23, 2021, the City Council adopted Resolution 11315 to oppose Senate Bills 9 and 10 because they would erode local control over the City's zoning and land use authority. Despite opposition from the League of California Cities and 244 cities throughout the state, Governor Newsom signed both bills into law on September 16.

#### Item #: 3.29.

### 11/9/2021

SB 9 requires cities to ministerially approve duplexes on single-family lots, including parcel maps dividing a lot into two equal parts (lot split). The ministerial approval process eliminates public hearings and public noticing for projects. SB 10 allows cities to upzone single-family parcels in "jobs rich" areas to allow for up to 10 units without going through the California Environmental Quality Act (CEQA) process. If a neighboring city were to rezone a parcel for a project of up to 10 units along the City border, our residents would be impacted, but would be unable to voice their concerns via the entitlement and CEQA review processes.

On August 25, a group of proponents filed the Brand-Huang-Mendoza Tripartisan Land Use Initiative, starting the process to place the Initiative on the ballot for the November 8, 2022 General Election. This measure would amend the State Constitution to ensure zoning, land-use and development decisions are made at the local level, and to stop legislative bills like SB 9 and SB 10 that seek to override municipal and county control over land-use and development.

Adopting Resolution No. 11363 would affirm the City's support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative, and emphasize the City Council's belief that local government control over land use matters is the best way to assess and meet the needs of the community.

## 7. ATTACHMENT

• Resolution No. 11363



# Agenda Item

**City Council** 

Item #: 3.	.29. 11/9/2021	File #: 21-0622
TO:	Honorable Mayor and Members of the City Co	uncil
THRU:	Thomas R. Hatch, Interim City Manager	
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# 1. SUBJECT

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### 3. **RECOMMENDED ACTION**

Adopt Resolution No. 11363. A Resolution of the City Council of the City of Orange Expressing Support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative to Amend Article XI of the Constitution of the State of California to Make Zoning and Land Use Community Affairs, and Not of State Interest.

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None.

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# 6. DISCUSSION AND BACKGROUND

Over the past few years, the State of California has enacted several laws that usurp local authority over land use decisions. This top-down approach replaces local decision making with state planning that is not responsive to local needs. The imposition of a one-size-fits-all land use policy is ill-suited to a large state of nearly 40 million people living in hundreds of diverse communities.

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On August 25, a group of proponents filed the Brand-Huang-Mendoza Tripartisan Land Use Initiative, starting the process to place the Initiative on the ballot for the November 8, 2022 General Election. This measure would amend the State Constitution to ensure zoning, land-use and development decisions are made at the local level, and to stop legislative bills like SB 9 and SB 10 that seek to override municipal and county control over land-use and development.

Adopting Resolution No. 11363 would affirm the City's support for the Brand-Huang-Mendoza Tripartisan Land Use Initiative, and emphasize the City Council's belief that local government control over land use matters is the best way to assess and meet the needs of the community.

## 7. ATTACHMENT

• Resolution No. 11363

#### **RESOLUTION NO. 11363**

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE EXPRESSING SUPPORT FOR THE "BRAND-HUANG-MENDOZA TRI-PARTISAN LAND USE INITIATIVE" TO AMEND ARTICLE XI OF THE CALIFORNIA CONSTITUTION TO MAKE ZONING AND LAND USE ISSUES COMMUNITY AFFAIRS, AND NOT OF STATE INTEREST

**WHEREAS**, the Legislature of the State of California in recent years has proposed, passed, and signed into law a number of bills addressing a range of land use planning and housing issues; and

WHEREAS, the majority of these bills usurp the authority of local jurisdictions to determine for themselves the land use policies and practices that best suit each city and its residents and instead impose "one-size-fits-all" mandates that do not take into account the unique needs and differences of local jurisdictions throughout the State of California; and

WHEREAS, the majority of these bills do not provide any incentives or requirements for low-income affordable or moderate income workforce housing, but instead impose new policies that will incentivize speculation and result in the addition of market-rate or luxury housing, thereby eliminating the opportunity for local jurisdictions to implement effective policies that will create more affordable housing and affirmatively further fair housing practices; and

WHEREAS, the ability of local jurisdictions to determine for themselves which projects require review beyond ministerial approval; what parking requirements are appropriate for various neighborhoods; what housing plans and programs are suitable and practical for each community; and what zoning should be allowed for residential properties, rather than having these decisions imposed upon cities without regard for the unique circumstances and needs of each individual community, is a matter of critical importance to the City of Orange and many other municipalities focused on local zoning and housing issues; and

**WHEREAS**, the City Council of the City of Orange hereby determines that local government entities are best able to assess and respond to the unique needs of their respective communities and hereby objects to the proliferation of State legislation (including SB 9 and SB 10) that would deprive us of the ability of local control.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Orange does hereby support the initiative to amend the California Constitution and finds:

SECTION 1. That the City Council of the City of Orange is opposed to the legislature of the State of California continually proposing and adopting legislation that overrides the zoning and land use authority of local government and inhibits the ability of local government to effectively plan for and implement policies to stimulate the efficient production of affordable housing in the City of Orange. SECTION 2. That the City Council of the City of Orange supports the Brand-Huang-Mendoza Tripartisan Land Use Initiative (Attached to the Resolution as Exhibit A) to ensure that zoning and land use authority rests with the local government entities that represent the communities in which the residents reside, and to allow local government to participate in solving our affordable housing crisis through solutions that effectively address the unique needs and conditions of each local community.

SECTION 3. That the City Council of the City of Orange incorporates each recital set forth herein above.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA ) COUNTY OF ORANGE ) CITY OF ORANGE )

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the \_day of \_\_\_\_\_, 2021 by the following vote:

AYES:COUNCILMEMBERS:NOES:COUNCILMEMBERS:ABSENT:COUNCILMEMBERS:ABSTAIN:COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange



# Agenda Item

**City Council** 

Item #: 3	.30. 11/9/2021	File #: 21-0623
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

# 1. SUBJECT

Support for Federal PFAS Legislation to protect ratepayers and water agencies. Resolution No. 11364.

## 2. SUMMARY

The Orange County Groundwater Basin supplies 77% of the water supply to residents, business, and visitors of Orange. PFAS has been detected in the Basin, entering primarily via the Santa Ana River whose flows infiltrate into and recharge the Basin. Although chemical manufacturers are the original source of PFAS chemicals, the City must find ways to remove them from our water supplies. PFAS impact to Orange County is estimated to cost more than \$1 billion, over 30 years, a cost that will likely increase. The City of Orange supports federal legislation that protects ratepayers and water/wastewater agencies from these devastating impacts and urges Congress to cast votes that support these public policy positions.

# 3. RECOMMENDED ACTION

Adopt Resolution No. 11364. A Resolution of the City Council of the City of Orange expressing support for Federal PFAS Legislation protecting ratepayers and water and wastewater agencies.

# 4. FISCAL IMPACT

None.

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

In coordination with the Orange County Water District, the City closely monitors potential PFAS legislation and advocates for critical PFAS policy priorities including: 1) All PFAS related legislation must exempt water and water agencies from any liability for PFAS clean-up costs, 2) All legislative efforts to amend the Safe Drinking Water Act must preserve the current use of cost-benefit analysis in

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### 11/9/2021

the development of drinking water standards, and 3) Provide funding for PFAS remediation to water and wastewater agencies. Staff recommends adoption of the attached resolution that will aid the City in communicating its position on these important public policy matters to stakeholders and legislators.

## 7. ATTACHMENTS

• Resolution No. 11364



# Agenda Item

**City Council** 

Item #: 3	.30. 11/9/2021	File #: 21-0623
то:	Honorable Mayor and Members of the City Cou	ıncil
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Christopher Cash, Public Works Director	

# 1. SUBJECT

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## 2. SUMMARY

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# 3. RECOMMENDED ACTION

Adopt Resolution No. 11364. A Resolution of the City Council of the City of Orange expressing support for Federal PFAS Legislation protecting ratepayers and water and wastewater agencies.

# 4. FISCAL IMPACT

None.

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

b: Provide and maintain infrastructure necessary to ensure the safety of the public.

Goal 4: Provide outstanding public service

b: Provide facilities and services to meet customer expectations.

# 6. DISCUSSION AND BACKGROUND

In coordination with the Orange County Water District, the City closely monitors potential PFAS legislation and advocates for critical PFAS policy priorities including: 1) All PFAS related legislation must exempt water and water agencies from any liability for PFAS clean-up costs, 2) All legislative efforts to amend the Safe Drinking Water Act must preserve the current use of cost-benefit analysis in

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### 11/9/2021

the development of drinking water standards, and 3) Provide funding for PFAS remediation to water and wastewater agencies. Staff recommends adoption of the attached resolution that will aid the City in communicating its position on these important public policy matters to stakeholders and legislators.

## 7. ATTACHMENTS

• Resolution No. 11364

#### **RESOLUTION NO. 11364**

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE EXPRESSING SUPPORT FOR FEDERAL PFAS LEGISLATION PROTECTING RATEPAYERS AND WATER AND WASTEWATER AGENCIES

WHEREAS, PFAS are a group of man-made chemicals created by chemical manufacturers and, despite playing no role in releasing PFAS into the environment, cities and water and wastewater agencies are now obliged to find ways to remove them from local water supplies; and

WHEREAS, PFAS have been detected in the Orange County Groundwater Basin, managed by Orange County Water District ("OCWD") and from which the City of Orange draws water, and are estimated to cost Orange County more than \$1 billion, over 30 years—a cost that will likely increase; and

WHEREAS, City ratepayers are at risk from pending PFAS legislation and associated PFAS costs and it is essential that water and wastewater agencies and stakeholders, including the City of Orange, take action to inform members of Congress of these devastating impacts; and

**WHEREAS,** it is also essential that any PFAS-related legislation exempt water agencies such as the City of Orange from any liability for PFAS cleanup costs; and

WHEREAS, a water utility that complies with applicable and appropriate federal management and treatment standards must not be responsible for current and future costs associated with PFAS cleanup; and

WHEREAS, given the potential for federal legislation such as the PFAS Action Act of 2021 (H.R. 2467), to expose water and wastewater agencies that simply receive and treat water supplies, with across-the-board liability for PFAS-related cleanup when they have no responsibility for the presence of PFAS, it is essential that an explicit exemption from Superfund clean-up liability must be made for water and wastewater agencies; and

WHEREAS, under existing law, the U. S. Environmental Protection Agency ensures that public health benefits of new drinking water standards are reasonably balanced with the compliance costs that water system ratepayers will ultimately incur and eliminating this analysis would burden ratepayers of all income levels with astronomical costs to comply with drinking water standards; and

WHEREAS, amendments to the Safe Drinking Water Act should not delete this longstanding cost-benefit analysis; and

**WHEREAS,** OCWD supports providing direct grant funding for PFAS remediation to water and wastewater agencies as provided in the Senate-passed Infrastructure Investment and Jobs Act (H.R. 3684).

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Orange hereby:

SECTION 1. Supports these PFAS policy principles to protect water and wastewater agencies and their ratepayers.

SECTION 2. Supports federal PFAS legislation effecting such policy principles to protect water and wastewater agencies and their ratepayers.

SECTION 3. Calls upon the Orange County Congressional delegation and California Senators to cast votes for legislation implementing these PFAS policy principles.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA ) COUNTY OF ORANGE ) CITY OF ORANGE )

I, Pamela Coleman, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange



# Agenda Item

City Council

ltem #: 9.	1. 11/9/2021	File #: 21-0624
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Dan Adams, Chief of Police	

## 1. SUBJECT

Approval of the Orange Police Department's recommendation not to award a Towing and Storage Services Agreement to Alberto's Towing based upon its failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021.

### 2. SUMMARY

The Orange Police Department utilizes private towing companies for the removal, storage and impounding of vehicles during the course of business.

The prior Towing and Storage Services Agreement with the private tow companies expired on July 1, 2021. On March 1, 2021, the Police Department began the Request for Proposal (RFP) process for towing and storage services agreements with local tow companies. The Police Department received four proposals from applicants including Archie's Towing, Tows R Russ, Southside Towing, and Alberto's Towing. The Police Department conducted a review of the proposals and conducted onsite evaluations of each of the four applicants in order to determine whether they met the requirements and standards set forth in the RFP and the Police Department Policy Manual, Policy No. 502 (Policy 502). Based upon the Police Department's evaluation, it was recommended that Archie's Towing, Tows R Russ, and Southside Towing be approved for towing and storage services agreements by the City. The Police Department determined that Alberto's Towing did not meet the requirements set forth in the RFP and Policy 502. Therefore, the Police Department concluded it would not recommend the approval of a towing and storage services agreement with Alberto's Towing to City Council.

The Police Department placed its recommendations regarding the towing contracts, including its recommendation not to award Alberto's Towing a contract, on the City Council Agenda for the regular meeting on June 8, 2021, as Item 3.14 on the Consent Calendar. This agenda item was posted for the public on June 3, 2021, on the City's website as well as physically posted at City Hall, the City's Main Library and the Orange Police Department.

During the June 8, 2021 City Council meeting, the City approved awarding towing and storage services agreements with the following tow companies based upon the recommendations of the Police Department: Archie's Towing, Tows R Russ, and Southside Towing. The City Council awarded the tow companies with three year agreements with a possible extension of two years. Alberto's

Item #: 9.1.

Towing was not awarded a towing and storage services agreement by the City Council based upon the recommendation of the Police Department as referenced above.

On September 7, 2021, a law firm representing Alberto's Towing contacted the City by letter alleging that Alberto's Towing did not properly receive notice regarding the City Council meeting on June 8, 2021, in order to address the City Council at that time regarding its application for a tow agreement. While the City believes adequate notice of the meeting and agenda item were provided prior to the June 8 meeting, the City is again placing the denial of a towing and storage services agreement award to Alberto's towing on the agenda to allow Alberto's Towing another opportunity to specifically address deficiencies that were the subject of the original recommendation of denial.

# 3. RECOMMENDED ACTION

Approve the Orange Police Department's recommendation not to award a Towing and Storage Services Agreement to Alberto's Towing based upon its failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021, as detailed in the staff report.

# 4. FISCAL IMPACT

None.

## 5. STRATEGIC PLAN GOALS

1a. Provide for a Safe Community: Provide staffing and resources to deliver services that ensure public safety.

# 6. DISCUSSION AND BACKGROUND

The responsibility of the City and its Police Department to provide for the safety of the public and to ensure smooth traffic flow often requires the removal of vehicles from the roadway via towing service. During the normal course of business, the Police Department responds to numerous traffic collisions and disabled or abandoned vehicles where removal is necessary. The Police Department is authorized to remove certain vehicles from the roadway and off-street parking facilities pursuant to provisions of the California Vehicle Code. Some vehicles need to be stored in a controlled environment to preserve evidence of crimes still being investigated. These services are provided through contract with independent towing companies licensed to conduct business in the City.

The Official Police Towing and Storage Agreement outlines the equipment, vehicle, and performance requirements for those companies who desire to contract with the City to provide towing and storage services. The Agreement also provides for oversight of the services provided and fees charged for services, including insurance and indemnification of the City, as well as provisions for the review and investigation of complaints, and suspension or termination of individual agreements.

On March 4, 2021, RFP No. 20-21.39 was announced for Police Towing and Storage Services on the City's website as well as in the Orange County Register newspaper. Four tow companies submitted proposals for the City's RFP for towing and storage services agreements. Pursuant to the terms of the RFP, a selection committee was established to evaluate the proposals and conduct site visits based upon the criteria set forth in the RFP. The selection committee makes the final recommendations for selection of an award for a tow agreement and the City reserves the right to

reject any and all of the proposals and to make its selection on the basis of the evaluator's criteria.

The selection committee conducted unannounced on-site inspections of the applicant's trucks and facilities. Each rater independently evaluated the tow companies according to the requirements and standards set forth in the RFP and Policy 502.

Based upon the evaluation results, the Orange Police Department recommended the following tow companies: Archie's Towing, Tows R Russ, and Southside Towing. These three tow companies met the requirements as outlined and set forth in the RFP to provide tow services.

Alberto's Towing was a tow company the Police Department did not recommend for the following reasons:

• As part of the RFP and Policy 502, "The perimeter wall or fence of the storage/impound lot shall be at least six feet high and be made of block, wrought iron or chain link. There shall be a minimum of three strands of barbed wire or razor ribbon around entire fenced area." The west side yard of Alberto's Towing property had a chain link fence without any razor ribbon or barbed wire and was not properly secured to the ground. The fence was also too close to large containers and a trailer from a neighboring business. The close proximity of the fence could easily facilitate someone gaining access to the tow yard and potentially accessing stored vehicles.



• The storage of vehicles for evidence in criminal cases is critical to the successful prosecution, integrity, and thoroughness of police investigations. As indicated in the RFP and Policy 502, "The towing service must have an inside enclosure for the purposes of vehicles impounded for evidence. This area must contain four walls, a roof and a door with a locking device." The owner was constructing an area for evidence holds, but it was not completed at the time of the inspection. Alberto's evidence hold area had several pieces of sheet metal hung near a building, however, there were no doors or locks and the roof was not completed. Additionally, the inside of the area had pedestrian doors that were unsecured and led into a different, adjacent, sub-leased business. Per the Planning Division, Alberto's Towing would need permits to modify any structures on their property. The City has not received any permit requests from Alberto's Towing.

• Policy 502 states, "Adequate open storage space shall be provided to accommodate stored, impounded and disabled vehicles resulting from police calls for tow vehicles. The minimum capacity of such a lot shall be 100 vehicles." The property lot has been subdivided by three other businesses. As such, the small lot size controlled by (or exclusive to) Alberto's Towing does not meet the

requirements of Departmental Policy and is unable to hold 100 vehicles.

Aside from the Departmental Policy deficiencies, additional considerations included:

• Alberto's Towing property lot was subdivided into to three separate businesses. All three businesses list a suite for their address. Alberto's Towing lists an address of 593 N. Batavia #B, however, the City has not approved adding a suite "B" to the address. In addition, there was no business sign posted on the gate at the time of the inspection.

• On March 6, 2021, Orange Police Department officers responded to Alberto's Towing regarding a "keep the peace" call. During the call, and while officers were standing nearby, Alberto (the owner) apparently assaulted a male causing him to fall to the ground.

• At the time of the inspection conducted by the selection committee, Alberto's Towing did not have their tow trucks inspected by the California Highway Patrol (CHP), which was a requirement set forth by the RFP and Policy 502. The Police Department later learned that the CHP inspected six tow trucks at Alberto's Towing facility on June 10, 2021. On this date, five of the six trucks failed the initial inspection which tow trucks must pass in order to get on the CHP Rotation Tow Program. Further, during the second inspection conducted by the CHP in order to approve a CVSA sticker as a requirement for being on the tow rotation program, only two of the trucks passed the inspection.

• Alberto's Towing did not have any prior police towing and storage experience.

Therefore, based on the low scores Alberto's Towing accrued in the evaluation of their tow yard, tow trucks, and evidence hold area, they received a score of 56%, which is below the core that could be recommended for a contract. The three tow truck companies who were awarded contracts pursuant to the RFP all received scores based upon their evaluation by the Police Department in the 90th percentile. A copy of the June 8 Agenda Item 3.14, including the analysis of the three tow companies recommended for approval, is attached for reference.

Overall, the Police Department did not recommend Alberto's Towing be awarded a Towing and Storage Services Agreement based upon their failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021.

### 7. ATTACHMENTS

- Staff Report for Agenda Item 3.14 dated June 8, 2021
- Request for Proposal No. 20-21.39 dated March 4, 2021



# Agenda Item

City Council

ltem #: 9.1	1. 11/9/2021	File #: 21-0624
то:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Dan Adams, Chief of Police	

## 1. SUBJECT

Approval of the Orange Police Department's recommendation not to award a Towing and Storage Services Agreement to Alberto's Towing based upon its failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021.

### 2. SUMMARY

The Orange Police Department utilizes private towing companies for the removal, storage and impounding of vehicles during the course of business.

The prior Towing and Storage Services Agreement with the private tow companies expired on July 1, 2021. On March 1, 2021, the Police Department began the Request for Proposal (RFP) process for towing and storage services agreements with local tow companies. The Police Department received four proposals from applicants including Archie's Towing, Tows R Russ, Southside Towing, and Alberto's Towing. The Police Department conducted a review of the proposals and conducted onsite evaluations of each of the four applicants in order to determine whether they met the requirements and standards set forth in the RFP and the Police Department Policy Manual, Policy No. 502 (Policy 502). Based upon the Police Department's evaluation, it was recommended that Archie's Towing, Tows R Russ, and Southside Towing be approved for towing and storage services agreements by the City. The Police Department determined that Alberto's Towing did not meet the requirements set forth in the RFP and Policy 502. Therefore, the Police Department concluded it would not recommend the approval of a towing and storage services agreement with Alberto's Towing to City Council.

The Police Department placed its recommendations regarding the towing contracts, including its recommendation not to award Alberto's Towing a contract, on the City Council Agenda for the regular meeting on June 8, 2021, as Item 3.14 on the Consent Calendar. This agenda item was posted for the public on June 3, 2021, on the City's website as well as physically posted at City Hall, the City's Main Library and the Orange Police Department.

During the June 8, 2021 City Council meeting, the City approved awarding towing and storage services agreements with the following tow companies based upon the recommendations of the Police Department: Archie's Towing, Tows R Russ, and Southside Towing. The City Council awarded the tow companies with three year agreements with a possible extension of two years. Alberto's

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Towing was not awarded a towing and storage services agreement by the City Council based upon the recommendation of the Police Department as referenced above.

On September 7, 2021, a law firm representing Alberto's Towing contacted the City by letter alleging that Alberto's Towing did not properly receive notice regarding the City Council meeting on June 8, 2021, in order to address the City Council at that time regarding its application for a tow agreement. While the City believes adequate notice of the meeting and agenda item were provided prior to the June 8 meeting, the City is again placing the denial of a towing and storage services agreement award to Alberto's towing on the agenda to allow Alberto's Towing another opportunity to specifically address deficiencies that were the subject of the original recommendation of denial.

# 3. RECOMMENDED ACTION

Approve the Orange Police Department's recommendation not to award a Towing and Storage Services Agreement to Alberto's Towing based upon its failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021, as detailed in the staff report.

## 4. FISCAL IMPACT

None.

## 5. STRATEGIC PLAN GOALS

1a. Provide for a Safe Community: Provide staffing and resources to deliver services that ensure public safety.

# 6. DISCUSSION AND BACKGROUND

The responsibility of the City and its Police Department to provide for the safety of the public and to ensure smooth traffic flow often requires the removal of vehicles from the roadway via towing service. During the normal course of business, the Police Department responds to numerous traffic collisions and disabled or abandoned vehicles where removal is necessary. The Police Department is authorized to remove certain vehicles from the roadway and off-street parking facilities pursuant to provisions of the California Vehicle Code. Some vehicles need to be stored in a controlled environment to preserve evidence of crimes still being investigated. These services are provided through contract with independent towing companies licensed to conduct business in the City.

The Official Police Towing and Storage Agreement outlines the equipment, vehicle, and performance requirements for those companies who desire to contract with the City to provide towing and storage services. The Agreement also provides for oversight of the services provided and fees charged for services, including insurance and indemnification of the City, as well as provisions for the review and investigation of complaints, and suspension or termination of individual agreements.

On March 4, 2021, RFP No. 20-21.39 was announced for Police Towing and Storage Services on the City's website as well as in the Orange County Register newspaper. Four tow companies submitted proposals for the City's RFP for towing and storage services agreements. Pursuant to the terms of the RFP, a selection committee was established to evaluate the proposals and conduct site visits based upon the criteria set forth in the RFP. The selection committee makes the final recommendations for selection of an award for a tow agreement and the City reserves the right to

reject any and all of the proposals and to make its selection on the basis of the evaluator's criteria.

The selection committee conducted unannounced on-site inspections of the applicant's trucks and facilities. Each rater independently evaluated the tow companies according to the requirements and standards set forth in the RFP and Policy 502.

Based upon the evaluation results, the Orange Police Department recommended the following tow companies: Archie's Towing, Tows R Russ, and Southside Towing. These three tow companies met the requirements as outlined and set forth in the RFP to provide tow services.

Alberto's Towing was a tow company the Police Department did not recommend for the following reasons:

• As part of the RFP and Policy 502, "The perimeter wall or fence of the storage/impound lot shall be at least six feet high and be made of block, wrought iron or chain link. There shall be a minimum of three strands of barbed wire or razor ribbon around entire fenced area." The west side yard of Alberto's Towing property had a chain link fence without any razor ribbon or barbed wire and was not properly secured to the ground. The fence was also too close to large containers and a trailer from a neighboring business. The close proximity of the fence could easily facilitate someone gaining access to the tow yard and potentially accessing stored vehicles.



• The storage of vehicles for evidence in criminal cases is critical to the successful prosecution, integrity, and thoroughness of police investigations. As indicated in the RFP and Policy 502, "The towing service must have an inside enclosure for the purposes of vehicles impounded for evidence. This area must contain four walls, a roof and a door with a locking device." The owner was constructing an area for evidence holds, but it was not completed at the time of the inspection. Alberto's evidence hold area had several pieces of sheet metal hung near a building, however, there were no doors or locks and the roof was not completed. Additionally, the inside of the area had pedestrian doors that were unsecured and led into a different, adjacent, sub-leased business. Per the Planning Division, Alberto's Towing would need permits to modify any structures on their property. The City has not received any permit requests from Alberto's Towing.

• Policy 502 states, "Adequate open storage space shall be provided to accommodate stored, impounded and disabled vehicles resulting from police calls for tow vehicles. The minimum capacity of such a lot shall be 100 vehicles." The property lot has been subdivided by three other businesses. As such, the small lot size controlled by (or exclusive to) Alberto's Towing does not meet the

requirements of Departmental Policy and is unable to hold 100 vehicles.

Aside from the Departmental Policy deficiencies, additional considerations included:

• Alberto's Towing property lot was subdivided into to three separate businesses. All three businesses list a suite for their address. Alberto's Towing lists an address of 593 N. Batavia #B, however, the City has not approved adding a suite "B" to the address. In addition, there was no business sign posted on the gate at the time of the inspection.

• On March 6, 2021, Orange Police Department officers responded to Alberto's Towing regarding a "keep the peace" call. During the call, and while officers were standing nearby, Alberto (the owner) apparently assaulted a male causing him to fall to the ground.

• At the time of the inspection conducted by the selection committee, Alberto's Towing did not have their tow trucks inspected by the California Highway Patrol (CHP), which was a requirement set forth by the RFP and Policy 502. The Police Department later learned that the CHP inspected six tow trucks at Alberto's Towing facility on June 10, 2021. On this date, five of the six trucks failed the initial inspection which tow trucks must pass in order to get on the CHP Rotation Tow Program. Further, during the second inspection conducted by the CHP in order to approve a CVSA sticker as a requirement for being on the tow rotation program, only two of the trucks passed the inspection.

• Alberto's Towing did not have any prior police towing and storage experience.

Therefore, based on the low scores Alberto's Towing accrued in the evaluation of their tow yard, tow trucks, and evidence hold area, they received a score of 56%, which is below the core that could be recommended for a contract. The three tow truck companies who were awarded contracts pursuant to the RFP all received scores based upon their evaluation by the Police Department in the 90th percentile. A copy of the June 8 Agenda Item 3.14, including the analysis of the three tow companies recommended for approval, is attached for reference.

Overall, the Police Department did not recommend Alberto's Towing be awarded a Towing and Storage Services Agreement based upon their failure to meet the requirements and standards set forth in the Request for Proposal No. 20-21.39 dated March 4, 2021.

### 7. ATTACHMENTS

- Staff Report for Agenda Item 3.14 dated June 8, 2021
- Request for Proposal No. 20-21.39 dated March 4, 2021



# Agenda Item

City Council

ltem #: 3.1	4.	6/8/2021	File #: 21-0278
то:	Honorable Mayor and Membe	ers of the City Council	
THRU:	Rick Otto, City Manager		

FROM: Thomas C. Kisela, Chief of Police

# 1. SUBJECT

Agreement with Truxyz Inc., doing business as Tows R Russ; Archie's Towing; and Southside Towing for Towing and Storage Services.

## 2. SUMMARY

Proposals for a three-year Towing and Storage Service contract were received and opened on April 5, 2021. Four bidders responded to the request for proposals. Qualified bidders recommended by the Orange Police Department are as follows: Tows R Russ, Archie's Towing, and Southside Towing. Applicant, Alberto's Towing, did not meet the minimum requirements.

### 3. **RECOMMENDED ACTION**

- 1. Approve the agreement with Tows R Russ, Archie's Towing, and Southside Towing and authorize the Mayor and City Clerk to execute on behalf of the City.
- 2. Approve Fee Schedule for Contracted Tow Companies, effective July 1, 2021.

# 4. FISCAL IMPACT

None.

# 5. STRATEGIC PLAN GOALS

Goal 1: Provide for a safe community

a: Provide staffing and resources to deliver services that ensure public safety.

# 6. DISCUSSION AND BACKGROUND

The Orange Police Department utilizes private towing companies for the removal, storage and impounding of vehicles during the normal course of business. The department is also authorized to remove certain vehicles from the roadway and off-street parking facilities pursuant to provisions of the California Vehicle Code. These services are provided through a towing and storage contract with independent towing companies licensed to conduct business in the City.

The Official Police Towing and Storage Agreement outlines the equipment, vehicle and performance requirements for those companies who desire to contract with the City to provide towing and storage services. The agreement also provides for oversight of the services provided and fees charged for services, including insurance and indemnification of the City, as well as provisions for the review and

investigation of complaints, and suspension or termination of individual agreements.

The City's contractual agreement with providers of towing and storage services, maintained under the direction of the Police Department, expires on June 30, 2021. The department solicited a Request for Proposal (RFP) No. 20-21.39 for Police Towing and Storage Services which was posted and distributed on March 4, 2021 on the City's website and the Orange County Register. RFP 20-21.39 was open for 29 days, with a closing date of April 1, 2021. Four proposal were received from prospective tow companies, each proposal was carefully reviewed and evaluated by a panel of veteran Police Department employees.

The Police Department visited each location and conducted on-site inspections. Each rater independently evaluated the tow companies according to the requirements and standards set forth in the RFP and the Orange Police Department Policy Manual, Policy No. 502 (Policy 502). The scores were compiled and averaged. The subsequent criteria was included in the RFP and assisted the panel in determining our top three candidates.

- <u>Service Requirements</u>: The Company must abide by the requirements set forth under Policy 502. Those requirements include, but are not limited to 24-hour/7-day availability, 20 -minute response time, live dispatch, approved rate schedule, valid City of Orange business license, security practices, open for inspection at any time during business hours.
- <u>Facility and Equipment Requirements:</u> On-site office for billing and vehicle release, regular 8:00 am 5:00 pm business hours, storage capacity for 100 vehicles, approved fencing, and secure storage area for evidence. Light and Medium-duty tow trucks are required; Heavy-duty trucks are recommended, but not required.
- <u>Qualification of Personnel:</u> Experience of employees and management in towing procedure, qualifications of office staff to ensure proper vehicle tracking, billing and recordkeeping, and longevity of tow drivers is part of the criteria.
- <u>Prior Experience:</u> Years in business, experience type, and years of service in police towing and storage.
- Accident and Damage Claims History: Self-explanatory.
- <u>References:</u> Other law enforcement agencies, bank, and personal references.

Below is a list of tow truck companies and the overall scores based on the above evaluation criteria.

1. Archie's Towing	97%
2. Tows R Russ	95%
3. Southside Towing	93%
4. Alberto's Towing	56%

Refer to Attachment "A" for the summary of tow evaluations.

Based upon the review of the bids and evaluation results, the Orange Police Department recommends the following tow companies: Archie's Towing, Tows R Russ, and Southside Towing.

As part of the RFP process, each tow company submitted their request to increase the tow fees. This request was made by the tow companies as business costs have increased over the last 10 years. The Fee Schedule for Contracted Tow Companies was last updated in 2011. During the 2011

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contract renewal period, tow fees were determined upon review and comparison of fee agreements authorized in surrounding jurisdictions. In 2016, tow companies did not submit a formal written request to increase tow fees but verbally expressed interest in increasing fees at the expiration of the three-year agreement in June 2019. The current towing and storage providers agreed to continue operating without interruption under the terms and guidelines of the expired contract with the intent of increasing tow fees during the 2021 towing and storage bidding process. The below proposed fees were determined by averaging the rates submitted by each tow company, a complete list of fees can be found in the attached Fee Schedule for Contracted Tow Companies.

Contracted Tow Services	<u>Current Fees</u>	Proposed Fees	<u>Change in Cost</u>
Emergency Tow with Driver & Sta	ndby Time		
Light Duty (Flat Rate)	\$150	\$215	\$65 (43% Increase)
Medium Duty (Flat Rate)	\$200	\$260	\$60 (30% Increase)
Heavy Duty (Flat Rate)	\$250	\$360	\$110 (44% Increase)
Service Call	\$75	\$100	\$25 (33% Increase)
Gate Fees			
Weekends & Holidays	\$75	\$100	\$25 (33% Increase)
Storage			
Standard Vehicle	\$40/day	\$60/day	\$20 (50% Increase)
Trucks	\$50/day	\$70/day	\$20 (40% Increase)
Police Evidence Holds	\$40 tow & \$1/day	\$1/day <sup>*</sup>	

\*Correction to current Evidence Hold fee.

To determine if proposed fees are reasonable, fees should not exceed those fees and rates charged for similar services provided in response to requests initiated by a public agency, including, but not limited to, the California Highway Patrol (CHP) or local police departments. Police agencies included in the review to assess tow fees are the CHP, Tustin Police Department, Newport Beach Police Department, and Costa Mesa Police Department. The listed agencies currently contract with one or more of the Orange Police Department's recommended tow companies. An average tow fee was computed to compare with the department's proposed fees, the comparison is shown in the below table.

Tow Service	Average Tow Fee	Proposed Fee	<u>Increase</u>	<u>% Change</u>
Light Duty	\$208	\$215	\$7	3.4%
Medium Duty	\$233	\$260	\$27	11.5%
Heavy Duty	\$351	\$360	\$9	2.5%

Tow fees provided by the CHP are highest amongst the agencies listed as tow fees are in accordance with industry standards and are renewed annually to adjust for cost each year. Tustin tow fees are amongst the lowest and have not been renewed since 2016. While proposed fees are slightly higher than the average, the department anticipates tow fees will average out as agencies renew their respective towing contracts to align with industry standards.

It is the recommendation of the Police Department to award Archie's Towing, Tows R Russ, and Southside Towing a three-year agreement that includes an option to extend the agreement for an additional two years. The recommended tow companies will adequately serve the needs of the Police Department.

# 7. ATTACHMENTS

- Official Police Towing and Storage Agreement
- Fee Schedule for Contracted Tow Companies
- Police Department Policy No. 502
- Attachment A Tow Company Evaluations

### OFFICIAL POLICE TOWING AND STORAGE SERVICE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_ day of, \_\_\_\_\_ 2021, by and between the City of Orange, a municipal corporation ("City"), and \_\_\_\_\_\_, a California corporation ("Towing Service").

### RECITALS

A. The Orange Police Department ("Police Department") requires the aid and assistance of towing services on a regular basis in the performance of its duties, including response to and investigation of vehicular accidents.

B. As a means for providing the necessary towing service, the City has approved the use of certain, towing service companies who have agreed to contract with the City to furnish the requisite towing service pursuant to the requirements of the City's Police Department, as set forth in the terms and conditions contained herein.

C. Official Police Towing and Storage Services ("OPTS") means a towing company selected by the City to be used on-call and on a rotating basis for any police situation where a tow truck is required.

D. In order for a towing service company to perform as an OPTS service provider for the City's Police Department, the towing service company must enter into a contractual agreement with the City and must be designated by the City as an OPTS service provider.

E. In furtherance of this objective, the City desires to retain Towing Service and Towing Service desires to accept and be retained by the City, as an independent contractor, for purposes of providing police towing services for the City's Police Department.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions contained herein the parties hereto agree as follows:

#### AGREEMENT

To ensure the efficient performance of police towing services for the City's Police Department, Towing Service hereby agrees to the following OPTS service requirements, specifications, terms, and conditions:

#### 1. <u>OPTS Designation; Independent Contractor</u>

A. City hereby designates Towing Service as an OPTS service provider for the City's Police Department.

B. The services which are the subject of this Agreement are not in the usual course of City's business and City relies Towing Service's representation that it is independently engaged in the business of providing such services and is experienced in performing the work.

C. At all times during the term of this Agreement, Towing Service shall be an independent contractor and not an employee of City. City shall have the right to control Towing Service only insofar as the result of the services rendered pursuant to this Agreement. City shall not have the right to control the means by which Towing Service accomplishes services rendered pursuant to this Agreement. Towing Service shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Agreement. Towing Service shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Towing Service acknowledges that it and any subcontractors, agents or employees employed by it shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

2. <u>OPTS Service Provider Obligations.</u> Towing Service agrees to comply with the following OPTS service provider terms and conditions:

A. Towing Service shall abide by all guidelines and requirements set forth in Orange Police Department Policy 502, attached as Exhibit "A" and incorporated herein by reference.

B. In the event the City chooses to operate an impound yard, the OPTS agrees to transport designated vehicles to the City-operated impound facility. Fees for towing/transporting of such vehicles will be paid to Towing Service by the City at the end of each month.

C. Towing Service shall respond to requests for OPTS service within 20 minutes from the time such request is received and shall promptly notify the City's Police Department if this response time cannot be met.

D. Towing Service shall not release any vehicles impounded by the City's Police Department without a release signed by the City's Police Department.

E. Towing Service shall notify the City's Police Department of any impounded vehicles being stored within the City pursuant to private party impound requests prior to leaving the City limits or within 30 minutes of vehicle storage, whichever occurs first.

F. All personal property located within impounded vehicles shall be surrendered to the property owner upon request after obtaining a property release form from the Police Department and upon presentation of proper identification unless the vehicle is to be held for evidence.

G. Towing Service shall not report to the scene of an accident or assist a disabled vehicle unless summoned by a law enforcement officer or in response to a request from the person in charge of the disabled vehicle. This provision is intended to prohibit OPTS service providers from engaging in practices commonly referred to in the tow service business as "soliciting, monitoring, cruising or poaching."

H. Towing Service shall furnish to the City by the tenth (10<sup>th</sup>) day of each month during the term of this Agreement a list of its currently employed drivers.

**3.** <u>Standards for OPTS Service Provider.</u> Towing Service agrees to comply with the following OPTS service provider standards:

### A. <u>Equipment</u>

1. <u>Company Information</u>: Towing Service name, address and phone number shall be displayed on both sides of the tow truck in letters not less than two and one-half (2-1/2) inches in height.

2. <u>Lights</u>: Trucks must, at all times, be equipped with such headlights, tail lights, red reflectors, stop lights, warning lights, and other lights as required by California law, plus one white utility light (adjustable or portable); and may be equipped with such other lights as the Towing Service may desire which are not forbidden by law.

3. <u>Additional Equipment</u>: Trucks must be equipped with all equipment required by law and Orange Police Department Policy 502 for tow trucks engaged in towing services.

### 4. <u>Additional Requirements for Towing Service</u>:

(a) Towing Service must have at least two regular duty trucks of oneton capacity with rear dual wheels. One of the rigs must be a flatbed. Towing Service must also have one medium duty truck with a GVWR of 19,501 to 33,000 pounds. One heavy duty threeaxle truck with a GVWR of at least 33,000 pounds is recommended but not required.

(b) Trucks must be equipped with red flares, lanterns or reflectors, hand tools, crow-bar, rope, broom, shovel, dustpan, fire extinguisher (the dry chemical type), portable red tail lights and stop lights for towed vehicles, equipment for opening locked vehicles, and safety snubber chain. Towing Service shall have at least one set of dollies readily available at all times, and one motorcycle sling.

(c) Towing Service shall have one truck equipped with a winch of sufficient size and capacity to retrieve vehicles, which have gone over embankments, off roadways, or into other inaccessible locations, which is equipped with safety dogs or equivalent braking devices. The winch and cable must have the ability to reach three hundred (300) feet.

### B. <u>Standard Rules of Operation for OPTS Service</u>

1. Requests for OPTS service response and the removal of traffic hazards may be made through the Police Department.

2. All City police officers are specifically prohibited from soliciting for or recommending any garage or tow service either directly or indirectly.

3. Towing Service shall not advertise or in any way publicize any official or other connection with the City, nor shall Towing Service advertise any address or telephone number of the City as a location to call for vehicle towing and storage service.

4. If more than one towing service company/garage is designated as an OPTS service, the system of calling for service shall be on a rotating basis as established by the Chief of Police.

5. If telephones are the means of communication for receipt of calls from the Police Department, Towing Service shall provide a list of telephone numbers to be called in order of priority, and immediately upon any change in such telephone numbers, or in the priority thereof, shall notify the City's Police Department in writing with effective the date of the change.

6. Any additions to or deletions from the tow truck fleet of Towing Service shall be immediately reported, in writing, to the Police Department.

7. Any change in operating locations of Towing Service shall be reported, in writing, to the City's Police Department at least thirty (30) days prior to such change.

8. Towing Service shall be staffed to ensure that there is an attendant on call, capable of responding to police requests for OPTS service as well as present or available for release of vehicles to the public twenty-four (24) hours a day, seven (7) days a week. Towing Service must be available during those hours specified and in the necessary numbers to operate the OPTS service equipment. If the Towing Service's telephone is not answered before 10 rings, or if the line is busy when called by the Police Department, Towing Service will be by-passed and the next OPTS service provider in rotation shall be called.

9. If an Official Police Towing and Storage Service is unavailable, or in case of disaster or emergency, the City reserves the right to call other tow services with adequate capabilities, which are not under contract or agreement with the City. Determination of these conditions shall rest solely with the Police Department.

10. After being dispatched by the Police Department to the scene, Towing Service shall cooperate with police officers in removing hazards and illegally parked vehicles as requested. It is the duty of the police officers to determine when such a vehicle should be impounded or moved and Towing Service shall abide by their decision.

11. Only tow trucks bearing the name of Towing Service shall be dispatched to the scene of need.

12. Towing Service shall conduct its business in an orderly, ethical, businesslike manner and use every means to obtain and keep the confidence of the motoring public.

13. Vehicles impounded by the Police Department for special investigation shall be held in maximum security until cleared by the investigating officers, at which time the

owners shall be permitted a 48-hour grace period at no charge in which to remove the vehicles from storage. Under no circumstances shall contents of vehicles with a "Police Hold" be removed.

14. Towing Service shall be responsible for the protection of police-impounded vehicles regardless of the location of storage until the vehicles have either been released to their owners or disposed of through legal process.

15. Towing Service shall be responsible for the acts of its employees while on duty and for damage to vehicles while in their possession.

16. Notwithstanding any provision or language that might indicate to the contrary, in responding to a call from the Police Department, Towing Service shall have no claim against the City for the cost of its service rendered, but shall look solely to the owner of the vehicle transported. No representation is made by the City that such person will be financially responsible.

17. All vehicles stored or impounded as a result of a "tow ordered by the Police Department" shall be made available to the owner of the vehicle or his/her representative, any insurance agent, insurance adjuster, or any body shop or car dealer, for the purpose of estimating or appraising damages, except vehicles stored or impounded with a "Police Hold."

18. Each Towing Service shall record its time in and its time out on every official assignment. Such records shall be made available and open to examination by the City.

19. The records of all vehicles impounded or stored at the direction of the City shall be available for inspection only to authorized employees or officials of the City of Orange.

20. Towing Service shall submit a monthly report to the designated Tow Officer, which shall include the following information:

- (a) Total police impounds.
- (b) Number of times dispatched by the Police Department.
- (c) Number of Police Department calls resulting in impounds.

(d) Number of calls answered in which time beyond one hour was required to handle.

21. The equipment and performance of Towing Service shall be subject to periodic review and/or inspection by the Chief of Police or his/her designee.

22. Towing Service trucks shall be equipped with two-way radio or telephone or other acceptable communications equipment. Citizen's Band Class D is not acceptable.

23. Towing Service storage lots shall be adequately fenced with gates locked and secured and reasonably well-lighted to maintain a maximum of security for stored and impounded vehicles. All storage lots shall meet the requirements as set forth in Department Policy

502.3 and will be inspected and approved by Police Department Crime Prevention and Traffic Personnel.

24. Adequate impound space shall be provided to accommodate vehicles held as evidence for the purposes of processing for physical evidence.

(a) Impound space shall be protected by an enclosure consisting of four walls, a roof and a door with a locking device for the protection from the elements of weather and other forms of contamination.

(b) Protection shall also be provided to preclude evidence contamination by employees and other individuals during normal business hours.

25. Towing Service office and storage lots shall be located within the City limits.

26. Towing Service shall comply with the appropriate sections of the California Business and Professions Code with regard to unauthorized charges or repair work on the vehicle in its charge.

27. Towing Service shall, when disposing of unclaimed vehicles, abide by all California laws pertaining thereto.

28. All vehicles stored or impounded as a result of a "tow ordered by the Police Department" shall be towed directly to an OPTS storage lot unless the Police Department or other person legally in charge of the vehicle requests that it be taken to some other location.

### 4. <u>Schedule of Rates</u>

A. Towing Service agrees that the towing fees it charges for OPTS service shall be those standard fees approved by the City as set forth in Exhibit "B" or as they may be later amended. The City will keep a copy of this fee schedule on file in the Office of the Traffic Bureau. Towing Service also agrees to post the schedule of fees at its place of business and to make copies of the schedule available for review, upon request, by City Police Department personnel or any person for who tow service is provided. The City reserves the right to modify the schedule of fees at any time.

B. Towing Service shall charge one-half the normal rate for any vehicle owned by the City and operated by a City employee or agent.

C. Towing Service shall charge one-half the normal rate for tow interruptions (i.e., vehicles released to owner or agent prior to removal, but after arrival of the tow company).

### 5. <u>Insurance.</u>

A. Towing Service shall carry workers' compensation insurance as required by law for the protection of its employees during the progress of the work. Towing Service understands

that it is an independent contractor and not entitled to any workers' compensation benefits under any City program.

B. Towing Service shall maintain during the life of this Agreement the following minimum amount of comprehensive general liability insurance or commercial general liability insurance: the greater of (1) Two Million Dollars (\$2,000,000) per occurrence, or One Million Dollars (\$1,000,000) with a Two Million Dollar (\$2,000,000) aggregate; or (2) all the insurance coverage and/or limits carried by or available to Towing Service. Said insurance shall cover bodily injury, death and property damage and be written on an occurrence basis.

C. Towing Service shall maintain during the life of this Agreement, the following minimum amount of automotive liability insurance: the greater of (1) a combined single limit of One Million Dollars (\$1,000,000); or (2) all the insurance coverage and/or limits carried by or available to Towing Service. Said insurance shall cover bodily injury, death and property damage for all owned, non-owned and hired vehicles and be written on an occurrence basis.

D. Each policy of general liability and automotive liability shall provide that City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Towing Service under this Agreement. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an additional insured as a contracting party. The minimum coverage required by Subsection 5.A and 5.B, above, shall apply to City as an additional insured. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth herein shall be maintained for the duration of the Agreement.

E. Towing Service shall provide the City with a certificate of insurance setting forth the above referenced minimum insurance coverage prior to performing any towing services pursuant to this Agreement. The certificate shall also provide that the City shall receive thirty (30) days' notice of unqualified cancellation or amendment of such policies.

F. Towing Service agrees to submit to the City a certificate of Workers' Compensation Insurance to cover its employees as required pursuant to the provisions of Divisions 4 and 5 of the California Labor Code. Towing Service also agrees to use only those subcontractors who are also covered by Workers' Compensation Insurance pursuant to the provisions of Division 4 and 5 of the California Labor Code.

G. Towing Service shall be responsible for any damage to persons or property arising in connection with the performance of services rendered pursuant to this Agreement.

6. <u>Indemnification</u>. Towing Service agrees to indemnify and hold the City harmless from and against any and all loss, costs, damage and expense, including but not limited to reasonable attorneys' fees, and any and all claims or demands arising from any act, activity or omission of the tow service undertaken pursuant to the terms of this Agreement, including, all costs and expenses incurred by the City in negotiating, settling, defending or otherwise protecting against claims and demands. This indemnification is not modified by the insurance requirements in Section 5.

7. <u>Term.</u> Except as otherwise provided herein, this Agreement shall remain in effect for a period of three years unless terminated by the City as provided herein. This Agreement may be reviewed at the conclusion of the initial three-year term and extended for up to two (2) additional years by mutual written agreement of all parties.

### 8. <u>Termination</u>

A. This Agreement may be terminated by the City upon the occurrence of any one or more of the following events:

1. Failure of Towing Service to comply with any of the provisions of this Agreement.

2. Repeated and/or flagrant violations of the Vehicle Code by Towing Service.

Failure of Towing Service to maintain clean, orderly, and secure storage

facilities.

3.

4. Failure of Towing Service to obtain and maintain a valid City business license.

5. Commission, by the owner or operator of Towing Service, of any unlawful, false, fraudulent, deceptive or dangerous act while conducting its towing operation business.

6. Removal by Towing Service, prior to police arrival, of a vehicle involved in a collision where, as a result of such collision, a person suffered death or injury; or where the driver of one of the vehicles involved in the collision, or any of the passengers of a vehicle involved in the collision, was under the influence of an intoxicant of any nature; or where there is evidence that the vehicle to be towed was involved in a hit-and-run collision.

7. Insurance coverage as required herein has either been withdrawn or lapsed or is not in force for any reason.

8. Dissolution of business or bankruptcy.

9. Assignment of this Agreement, or any right or interest stated therein, without the prior written consent of the City.

10. Substantial or recurring deviation from the City's approved schedule of rates.

11. Failure of Towing Service to maintain satisfactory service to the public or for failure to keep any towing vehicle in a safe condition and good repair.

12. Failure to comply with any requirement of Orange Police Department Policy 502.

B. Termination of this Agreement by City shall be effective upon written notice by City to Towing Service at the address provided herein.

C. Upon termination of this Agreement by City, Towing Service shall no longer have the right to engage in OPTS service for the City's Police Department for a period of time determined by the Chief of Police.

**9.** <u>Maintenance and Inspection of Records.</u> In accordance with generally accepted accounting principles, Towing Service shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Agreement. City and its authorized representatives shall have access to and the right to audit and reproduce any of Towing Service's records regarding the services provided under this Agreement. Towing Service shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Towing Service agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days' notice from City, and copies thereof shall be furnished if requested.

**10.** <u>**Compliance with all Laws/Immigration Laws.**</u> Towing Service shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement, including immigration laws.

11. <u>Governing Law and Venue</u>. This Agreement shall be construed in accordance with and governed by the laws of the State of California and Towing Service agrees to submit to the jurisdiction of California courts. Venue for any dispute arising under this Agreement shall be in Orange County, California.

**12.** <u>Integration</u>. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

**13.** <u>Notices.</u> Any notices required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

To Towing Service:		City of Orange Attn: Chief of Police 1107 N. Batavia Orange, CA 92867
Attn:	To Towing Service:	
		Attn:

**14.** <u>Successors and Assigns.</u> This Agreement, or any part thereof, may not be assigned by a party without the express written consent of the other party. If consent is so granted, all obligations and covenants made under this Agreement shall bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns. Any attempted assignment or delegation in derogation of this section shall be void.

**15.** <u>Waiver of Breach.</u> If a party waives enforcement or fails to act promptly to enforce any provision of this Agreement upon any event of breach by the other party, such waiver shall not automatically extend to any continuation of the breach or to any other or future events of breach.

**16.** <u>**Amendment.**</u> No modification, amendment, addition to, deletion, or alteration of the terms of this Agreement, whether written or verbal, shall be valid unless made in writing and formally approved and executed by all parties.

**17.** <u>**Counterparts**</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

### [Remainder of page intentionally left blank; signatures on next page]

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

#### **"Towing Service"**

"City"

CITY OF ORANGE, a municipal corporation

*By:	
Printed Name:	
Title:	

By:\_\_\_\_\_ Mark A. Murphy, Mayor

*By:	
Printed Name:	
Title:	

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning, Sr. Asst. City Attorney

\*<u>NOTE</u>: City requires the following signature(s) on behalf of the Towing Service:

- -- (1) the Chairman of the Board, the President or a Vice-President, <u>AND</u> (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. <u>OR</u>
- -- The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to City.

# EXHIBIT "A"

# POLICE DEPARTMENT POLICY 502 TOW COMPANY GUIDELINES AND ROTATION TOW LISTING

[Behind this sheet]

# EXHIBIT "B"

# FEE SCHEDULE

[Behind this sheet]

# ORANGE POLICE DEPARTMENT FEE SCHEDULE FOR CONTRACTED TOW COMPANIES Effective 7/1/21

TOWS	FEF	ES
Emergency Tow with driver	Lt. Duty Med. Duty Heavy Duty	\$215.00 Flat Rate \$260.00 Flat Rate \$360.00 Flat Rate
Service Call – Motorist Assist only (i.e. flat tire, lock out, gas, jump start)		\$100.00 Flat Rate
OPD request to scene with hookup and no tow (including evidence tows)		<sup>1</sup> ⁄ <sub>2</sub> of Tow Flat Rate
OPD request to scene with no hookup or tow	V	Replaced to top of list

When TOWING SERVICE responds to a police rotation call, whether or not the truck is used is of the necessary class or greater to fulfill the duties as requested, TOWING SERVICE shall be compensated at the rate established for the lowest class of truck necessary to fulfill the duties required and not at the rate for the truck used to complete same.

## GATE FEES

Normal business hours of 8:00am to 5:00pm Monday through Friday

Weekends and National Holidays; 5:00pm to 8:00am

Gate Fee of \$100.00 (charged once)

No Charge

# LIEN SALE FEES (California Vehicle Code 9800-9803)

TOWING SERVICE may impose lien sale proceedings and related fees on vehicles taken into their custody in accordance with the California Vehicle Code and the California Evidence Code.

# ORANGE POLICE DEPARTMENT FEE SCHEDULE FOR CONTRACTED TOW COMPANIES Effective 7/1/21

Continued

SERVICES	]	FEES
Standby Time/Extended Service (not tow driver's fault)	Lt. Duty Med. Duty Heavy Duty	\$215.00 / hour* \$260.00 / hour* \$360.00 / hour*
* to be billed after first hour in 15 minute incre	ements	
Towing Vehicles out of town Scene of pickup to destination		Hourly rate to be charged in 15 minute Increments
STORAGE	1	FEES
Standard Vehicle (SUV's Included) or Motorcycle	;	\$60.00 / day
Trucks (over 26,000 GVWR), trailers (over 10,000 boats and RV's:	) GVWR),	\$70.00 / day
Storage and tow charges		\$1.00 / day storage

Pursuant to the OPTS, the Police Department reserves the right to modify the schedule of fees at any time. The fee schedule has been modified to be effective 7/1/21.

# Tow Company Guidelines and Rotation Tow Listing

# 502.1 PURPOSE

The purpose of this policy is to establish guidelines, standards and requirements for tow companies contracting with the OPD. The purpose of this policy and the Tow Service Agreement is as follows:

- (a) To ensure that members of the motoring public are protected from unethical or unfair business practices by City of Orange contracted tow companies,
- (b) To provide police tow companies with an equitable system for the distribution of calls,
- (c) To provide police tow companies with clear and concise requirements and standards,
- (d) To ensure consistency in the interpretation, administration and enforcement of the Tow Service Agreement,
- (e) To provide a fair and equitable means to resolve disputes between police tow companies and the Orange Police Department.

**NOTE:** This policy makes reference to the Tow Service Agreement. The Tow Service Agreement should be referenced for specific language.

# 502.1.1 POLICY

- (a) Whenever the driver or owner of a vehicle, through the police department, requests a particular club, association or tow service to care for his vehicle, the garage or tow service requested shall be called if that tow service can respond in a reasonable amount of time. If a vehicle is a hazard in the roadway then a rotational tow service may be called to remove the vehicle from the roadway, at the driver's expense. All other requests for police tow services made by police department personnel will be considered a rotation call.
- (b) Whenever a driver does not request a particular garage or tow service, a police tow service shall be called in order from a rotation list. The Communications Center of the OPD shall maintain the rotation list. When more than one vehicle is to be towed from an accident scene, the first towing service on rotation shall have preference to service all vehicles at the accident scene. If they cannot handle the service for all vehicles, the next tow service on the rotation list shall be called.
- (c) A call to a police tow service shall constitute one turn on the list and the police tow service shall be moved to the bottom of the list. This includes when the company fails to answer the phone, is unable to respond or is canceled due to excessive response time. If it is determined that tow service is not needed and is canceled by OPD, up to and including arrival at the scene, there shall be no charges and the tow service will be placed back on top of the list.

Orange PD Policy Manual

## Tow Company Guidelines and Rotation Tow Listing

- 1. If the tow service is canceled by the owner or driver of a vehicle, prior to the police towing service taking possession of the vehicle, there shall be no charges for towing. The tow service shall immediately notify the OPD Communications Center and advise them of the cancellation. The tow service will then be placed back on the top of the list.
- 2. If service, other than towing, has begun and is canceled by the driver or owner of a vehicle, charges owed shall be no more than one-half of the regular towing charge. No lien shall arise from the service unless the tow service has presented a written statement to the vehicle's owner, or their agent, for the signed authorization of services to be performed.
  - (a) The tow service shall not attempt to take possession of the vehicle in order to establish a lien for any non-towing services performed, or begun, and subsequently canceled.
- (d) The rotation list shall be used when an officer stores or impounds a vehicle.
- (e) All OPD employees are prohibited from directly or indirectly soliciting services for, or recommending, any tow service. **Exception:** In the event that a big rig tow is requested then a rotational tow service, who maintains such a vehicle, may be called out of rotation.
- (f) All officers storing or impounding a vehicle shall complete a CHP Form 180 and shall give a copy to the tow driver prior to the vehicle being towed from the scene.
- (g) Officers authorizing the storage/impounding of a vehicle shall notify the driver or owner of the vehicle (if present) where it is being stored.

## 502.2 TOWING SERVICES

- (a) All tow services shall equip and maintain their tow trucks in accordance with the provisions set forth in the California Vehicle Code, Title 13 or the California Code of Regulations and the specifications contained in this policy and the Tow Service Agreement.
- (b) The tow service shall provide a business office (billing site) for contract administration purposes and the release of vehicles. This office shall be located within the city limits of Orange and shall be staffed by either the contractor or a person who has the authority to conduct business and make decisions on behalf of the contractor during the hours of 8:00 am to 5:00 pm, Monday through Friday (excluding holidays).
- (c) Tow operators shall comply with the California Vehicle Code in reporting the storage of vehicles over 30 days. The police department shall be furnished a copy of all reports required by the Department of Justice. The copy of said report may be delivered to the police department by regular mail, or in person, to the attention of an OPD Traffic Bureau Tow Truck Administrator.
- (d) The tow service shall provide 24-hour, 7-day-a-week towing service within the city limits of the City of Orange.

# Tow Company Guidelines and Rotation Tow Listing

- (e) Contracted police tow companies must arrive at the scene within 20 minutes of being called by OPD personnel, except for big rigs whose maximum response time is 45 minutes.
- (f) Towing service is required to have direct two-way communications or an FCC license for a master control dispatching radio. The radio shall be manned at all times.
- (g) Telephone lines must be sufficient to receive police calls. If the telephone is not answered before ten rings, or if the line is busy, the tow service being called will be bypassed and the next tow service in rotation will be called. Telephone answering services are not allowed, unless all after-hour calls are answered directly by a night dispatcher without a transferring intermediate.
- (h) The towing service shall possess a valid City of Orange Business License.
- Pursuant to the Orange Municipal Code, all tow drivers shall obtain a driver's permit. Tow drivers shall wear the permit in plain view during all service calls within the limits of the City of Orange.
- (j) Since contract tow companies are indirectly associated with the OPD, each contract tow company shall be required to furnish their tow drivers with a distinctive company uniform. Each uniform shall have the firm name, as well as the tow drivers name or I.D. number in a conspicuous place. A detachable nameplate may be worn in place of the embroidered name. No wording, designs, photos, gestures or anything else that could be considered offensive or obscene to the general public shall be displayed on any part of the uniform. Each driver shall have sufficient uniforms so as to maintain a neat, well-groomed and professional appearance at all times. All drivers shall be in uniform before any towing or service operation for the City of Orange begins.
- (k) A towing service shall not respond to an OPD call assigned to another tow service unless requested to do so by the police department.
  - 1. A tow service that comes upon a scene may be requested by an officer to move a vehicle to a safe location or remove debris on the roadway. There will be no charge for this service and the tow rotation will not be affected.
  - 2. Nothing in this section is intended to prevent an assigned contract tow service from requesting assistance when needed at a scene. Assistance shall be limited to specialized equipment not readily available to the contract tow service and only after the contract tow service has arrived and evaluated the scene. In no way does this section allow a contract tow service to send another tow service in its place.
- (I) The towing service shall advise OPD at the time of notification, if they are either unable to respond, or unable to meet the maximum response time. If, after accepting the call, the towing service is unable to respond or will be delayed in responding, the towing service shall immediately notify the police department's Communication Bureau. The towing service will then be moved to the end of the rotation list. At no time will a contract tow service assign an Orange Police Department request for service to another tow service.
- (m) No vehicle stored/impounded at the direction of the OPD shall be released without written approval from the police department (OPD Form A-2 shall be used).

Orange PD Policy Manual

# Tow Company Guidelines and Rotation Tow Listing

(n) No vehicle shall be moved or towed where an immobilization device has been affixed by OPD personnel.

## 502.3 STORAGE SECURITY RESPONSIBILITY

Tow services must provide adequate secure storage for vehicles and property. Minimum standards shall consist of the following:

- (a) Open area storage The perimeter wall or fence of the storage/impound lot shall be at least 6' high and be made of block, wrought iron or chain link. There shall be a minimum of three strands of barbed wire or razor ribbon around entire fenced area. It shall be installed in such a manner so as to discourage access over the top of the fence or wall. The maximum gap between the bottom of the fence/gate and pavement/ ground is 6". The bottom of the fence should be reinforced with 9 gauge or larger wire to discourage access underneath. All doors or gates entering the lot shall be equipped with a locking mechanism or device. Fencing and locking specifications and design shall meet approval of the Planning Department, OPD Crime Prevention Bureau and the City Design Review Board.
- (b) Inside enclosure Shall consist of four walls, a roof, and a door with a locking device for protection from the elements and other forms of contamination. The bottom edge of the enclosed structure shall not be more than 2" above the finished parking surface of the enclosed area. This space must be adequate to contain two full-sized passenger vehicles. If the tow service utilizes a portion of an indoor garage for inside storage, the space designated for the storage of police impounds shall be secured from the public.
- (c) Prior to the utilization of a new storage facility that was not listed on the application for rotation tow listing; the towing service shall obtain the approval of the Chief of Police or his/her designee and furnish the new address 15 days in advance for inspection.
- (d) There shall be adequate lighting to illuminate the entire storage/impound lot, as well as all structures thereon. Outside lighting shall be inspected and receive approval by an OPD Crime Prevention Specialist.
- (e) Adequate open storage space shall be provided to accommodate stored, impounded and disabled vehicles resulting from police calls for tow services. The minimum capacity of such a lot shall be 100 vehicles.
  - 1. All stored/impounded and disabled vehicles must, as soon as possible from the time of pickup, be put into a fenced and secured storage lot and remain inside a storage lot until released or otherwise disposed of.
- (f) All vehicles impounded for the California Vehicle Code (missing or altered VIN numbers), shall be placed in an area of the impound lot that will allow for the vehicle to be inspected by police personnel. This requirement is necessary for the first ten days of the impound.
- (g) When a vehicle is impounded, the tow service will place the word "Hold" or other similar notation on the windshield of the vehicle along with the date of impound and tow drivers I.D. number.
  - 1. The responsibility for determining and placing the word "Hold," or other similar notation on the windshield of the vehicle, will be that of the tow truck driver at

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# Tow Company Guidelines and Rotation Tow Listing

the time he places the vehicle in storage. The tow truck driver's signature on the CHP Form 180 acknowledges the type of storage or impound marked by the officer.

- (h) Any damage to the wall and/or fence structures that compromises security shall be repaired within 24 hours to insure proper protection for stored vehicles.
- (i) The tow service shall be held responsible for all vehicles, personal property and vehicle accessories stored within its storage facility. The City of Orange, its officers, agents and employees shall be relieved of all responsibility. It is the responsibility of the driver to confirm the accuracy of damage and property listed on the CHP Form 180 prior to signing it.
- (j) The tow service shall notify the OPD prior to the removal of property from an impounded vehicle and place a receipt in the impounded vehicle. The requirement to notify the police department, prior to the removal of property, may be waived by the Chief of Police or his/her designee if it is determined that proper safeguards and procedures are utilized by the tow service.
  - 1. This requirement may not be waived in cases where a vehicle has been impounded for evidence or investigation. In this case, no property will be moved, tampered with, or removed from the vehicle.
  - 2. The tow service shall release personal property from an impounded vehicle at the request of the vehicle owner or their agent. If such a release is made, the tow service shall notify the police department.
    - (a) Personal property is considered to be items that are not affixed to the vehicle.
- (k) All stored/impounded vehicles shall be stored and released from the tow company's billing site.
- (I) The tow company will release the vehicle to the owner or their agent, without charge, whenever a vehicle is impounded as evidence under the California Vehicle Code and the owner is determined not liable for the towing and storage charges per the California Vehicle Code. In these instances, which will be determined by the police department, the tow company will bill the City of Orange.
- (m) If the police department mistakenly impounds or stores a vehicle, or fails to properly notify the owner, the vehicle will be released to the owner at no charge with the approval of the police department. The tow service will bill the Orange Police Department for 50% of the storage and tow fees. The Orange Police Department will determine if the vehicle was stored/impounded improperly.
- (n) Vehicles that are a hazard to public health and safety, as described in the California Vehicle Code, shall not be released, towed or pushed onto a public street without the express permission of the on-duty watch commander at the OPD. Vehicles with registration expired over six months in violation of the California Vehicle Code, shall not be released, placed upon a public street or towed unless on a flatbed truck. If the vehicle is a hazard and is to be placed on private property by the tow service, at the request of the vehicle owner, the tow service must first obtain written permission from the property owner.

# Tow Company Guidelines and Rotation Tow Listing

(o) If, upon release, a vehicle is found to be disabled due to a dead battery, flat tire or other minor mechanical malfunction, the owner of the vehicle shall have the option of having another tow company move the vehicle. At the owner's request, the police tow provider may provide tow service and charge the normal applicable fees. At no time, shall the police tow service charge additional storage fees if another tow service is requested to take the vehicle and the vehicle is removed on the day of release.

# 502.4 TOW TRUCK CLASSIFICATIONS

All equipment specifications for every class of tow truck listed within this section of the manual can be found in the OPD form entitled, "Tow Service Agreement Equipment Specifications." All service, safety and equipment requirements for every class of tow truck listed within this section of the manual can be found in the OPD form entitled, "Tow Truck Inspection Guide." There shall be no deviations.

- (a) **Class A** light duty tow:
  - 1. The tow service shall maintain a minimum of two tow trucks with a manufacturer's gross vehicle weight rating (GVWR) of 10,000 to 19,500 pounds, with wheel lift capability and may have a car carrier,
  - 2. A tow service that has a car carrier may be exempted from the wheel lift capability requirements; however, the car carriers must be additional units to the company's wheel lift tow trucks,
  - 3. Since Class A tow trucks (light duty conventional wheel lifts) handle approximately 90% of the towing and service calls on our highways, this class of truck must be better equipped than Class B, C or D tow trucks,
  - 4. Each Class A tow truck shall be equipped, at a minimum, with the following (as well as the items listed on Attachment A & B),
    - (a) Wheel lift towing equipment with a minimum lift rating of 3,000 pounds. All tow equipment shall include proper safety straps,
    - (b) Boom with a minimum static rating of 5,000 pounds,
    - (c) Winch cable 8,000 pound rating on the first layer of cable,
    - (d) Winch cable 100', 3/8-inch diameter, with a working limit of 3,500 pounds,
    - (e) Towing slings rated at 3,000 pounds minimum,
    - (f) Tow chains 5/16" alloy or OEM specs., J/T Hook Assembly,
    - (g) Amber warning lights with front and rear directional flashing capability with an on/off switch in cab (Required on all tow trucks Amber light bar preferred. Light bar must be affixed to top of cab or securely mounted

# Tow Company Guidelines and Rotation Tow Listing

above cab, where it can be clearly seen in all directions - must comply with height requirements),

- (h) Power outlets (hot boxes), front and rear mounted, with outlets compatible to 12-volt booster cables with minimum 25' cables,
- (i) Heavy duty, 60+ AMP battery,
- (j) Suitable cab lighting,
- (k) Trailer hitch capable of housing a 1 7/8" ball and 2" ball,
- (I) One (1) 1 7/8" ball and one (1) 2" ball,
- (m) Rear work lights,
- (n) Safety chain D-Ring or eyelet mounted on rear of truck.
- 5. The tow truck driver shall be required to complete a pre-operation inspection of their tow truck, as well as inventory the required equipment prior to the start of each shift. An inspection/inventory sheet shall be completed prior to the start of each shift. The sheets must be kept on file at the tow company's office and available for inspection by OPD employees, upon request. Any item missing or safety equipment violation must be replaced/repaired prior to the start of the shift. It shall be the tow company's responsibility to make sure the inspection is performed and completed,
- 6. **Note:** this section is required for <u>all</u> classes of tow trucks.
- (b) Class B medium duty, Class C heavy duty and Class D super heavy duty:
  - (a) The tow service shall maintain at least one tow truck with a manufacturer's gross vehicle weight rating (GVWR) of 19,501 to 33,000 pounds. The truck shall be capable of providing air to the towed vehicle.
    - (a) The tow service may also have a car carrier; however, the car carrier must be an additional unit.
- (c) **Class C** heavy duty:
  - The tow service may maintain at least one, three axle tow truck with a manufacturer's gross vehicle weight rating (GVWR) of at least 33,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle,
  - 2. The tow service shall enroll all three axle tow trucks in the California Highway Patrol's Bi-annual Inspection of Terminals (BIT) Program and shall comply with all BIT requirements.
- (d) **Class D** super heavy duty:

# Tow Company Guidelines and Rotation Tow Listing

- 1. The tow service may maintain at least one three-axle tow truck with a manufacturer's gross vehicle weight rating (GVWR) of at least 50,000 pounds. The truck shall be equipped with air brakes and must be capable of providing air to the towed vehicle,
- 2. The tow service shall enroll all three axle tow trucks in the California Highway Patrol's Bi-annual Inspection of Terminals (BIT) Program and shall comply with all BIT requirements,
- 3. To properly and safely tow and service the wide variety of vehicles being operated on the highway, a towing procedure may require the use of auxiliary equipment specifically designed for the purpose. This auxiliary equipment should be used when recommended. A listing of service and auxiliary equipment for each classification can be found in the OPD form entitled, "Tow Service Agreement Equipment Specifications."
- (e) Identification labels and vehicle markings.
  - 1. Each piece of towing equipment shall have a label or I.D. tag permanently affixed to the equipment in a prominent location to identify the manufacturer's serial number, model and rated capacity. Manufacturer's specification pamphlets may serve in lieu of rating plates if the rating plates are illegible or damaged. It is the tow company's responsibility to provide the police department with this information and a copy of same shall be kept in a safe place in the cab of the tow truck.
  - 2. All controls to operate the tow truck shall be clearly marked to indicate proper operation as well as any special warnings or cautions.
  - 3. All tow trucks under city contract, shall clearly display in contrasting colors, the name of the tow company, address, phone number, truck number and the words "Official Police Tow," on both sides of the vehicle. The tow service shall be required to keep all markings, title and logos clean and in readable condition.
  - 4. Assigned truck numbers shall be placed on both sides of the tow truck. The numbers shall be placed above the midpoint in height on the vehicle and shall be of 2" minimum height.
  - 5. If a tow service terminates its agreement with the city, or is terminated, the tow service shall remove all descriptions from equipment showing any affiliation with the City of Orange and or the OPD.

502.4.1 TOWING OF OVERWEIGHT, OVERSIZE VEHICLES, EQUIPMENT - PERMIT REQUIRED PER THE CURRENT O.M.C.

(a) It is unlawful for any person, firm, association or corporation to move or operate upon any highway in the City of Orange, any vehicle, combination of vehicles, mobile

## Tow Company Guidelines and Rotation Tow Listing

equipment or load which weighs or measures in excess of the weight, width, height or length permitted by Division 15 of the California Vehicle Code, unless an application has been filed with and a permit issued by the Director of Public Works for the City of Orange.

- (b) Tow trucks Disabled legal vehicles or legal combination of vehicles may be towed on city highways to the nearest appropriate place of repair, or to the nearest secure storage area that is appropriate for the vehicle or load, whichever is closest and most accessible. It is not the intent of this section to allow these vehicles to be towed to their ultimate destination for convenience, unless that destination meets the above criteria.
- (c) Disabled legal vehicles or combination of vehicles, when connected to a tow truck may exceed legal gross weight (refer to the California Vehicle Code). When one end of a truck or truck tractor of legal weight is elevated by a tow truck, the drive axles of the tow truck and/or the drive axle or axles of the disabled vehicle may exceed legal axle or axle group weight limitations. If any axle or axle group exceeds legal weight, movement is limited to the approved city truck routes or a route approved by the City of Orange Traffic Engineer.
- (d) Towing permit loads and/or vehicles Disabled vehicle or combination of vehicle whose movement is authorized by a transportation permit or any disabled vehicle or combination of vehicle which because of damage has incurred distortion in width or height thereby causing an excess in legal dimensions may only be moved at the direction of a peace officer or an extra legal load permit issued by the City of Orange Department of Public Works.
  - 1. **Note:** All tow companies are required to purchase an annual transportation permit from the Department of Public Works, and shall send a copy of same to the OPD for filing within ten days after receipt of permit. All conditions of the permits must be followed.
- (e) **Possession of permit -** The permit shall be carried in the vehicle to which it refers at all times while the vehicle is being moved within the highway limits and shall be open to inspection by Orange Police Department personnel, any California Vehicle Safety Alliance Officer, authorized agent of the City of Orange, or any other officer or employee charged with the care and protection of such highways per refer to the California Vehicle Code.

## 502.4.2 TOW TRUCK DRIVERS

(a) The tow service shall ensure that only qualified and competent tow drivers respond to calls initiated by the OPD. Tow truck drivers shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required equipment to provide safe and proper service. All tow truck operators must be capable of demonstrating their tow operating abilities upon request of any peace officer. Additionally, the drivers will be required to exercise good, sound judgment in carrying out their duties. Any driver found working without being properly trained and qualified will be prohibited from further duty and the tow services contract may be terminated immediately. Tow truck drivers shall be at least 18 years-old and possess the following minimum class driver's license:

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- 1. Class A tow trucks a valid Class C (3) license or a valid Class A (1) license with a valid medical certificate,
- 2. Class B tow trucks a valid Class A (1) license with a valid medical certificate,
- 3. Class C tow trucks a valid Class A (1) license with a valid medical certificate,
- 4. Class D tow trucks a valid Class A (1) license with a valid medical certificate.
- (b) The Class A (1) license must be endorsed to allow operation of special vehicle configuration and/or special cargoes. Tow truck drivers shall have the proper class of license and endorsement(s) for vehicle and cargo being transported as shown below:
  - 1. VEHICLE TYPE OF CARGO Pulling more than one trailer,
    - (a) Class License A
    - (b) Endorsement Code T
  - 2. VEHICLE TYPE OF CARGO Transporting passenger for hire,
    - (a) Class License A or B
    - (b) Endorsement Code P
  - 3. VEHICLE TYPE OF CARGO Tank vehicle,
    - (a) Class License A or B
    - (b) Endorsement Code N
  - 4. VEHICLE TYPE OF CARGO Hazardous materials,
    - (a) Class License A, B, or C
    - (b) Endorsement Code H
  - 5. VEHICLE TYPE OF CARGO Tank vehicle with hazardous materials.
    - (a) Class License A, B, or C
    - (b) Endorsement Code X
- (c) Whenever tank vehicles, double trailers and hazardous materials carriers are towed or driven, the driver needs to possess the appropriate class of license and endorsement.
- (d) Empty buses can be towed without the passenger transport endorsement, but the tow truck driver must have the passenger transport endorsement if they drive the bus, even without passengers.
- (e) Tow truck drivers may obtain a Class A driver's license which is restricted to towing other vehicles.
  - (a) The actual driving of damaged vehicles or vehicles being serviced requires that the Class A license not be restricted to towing vehicles.
- (f) In order to obtain an unrestricted Class A license, the applicant must pass the driving test in a conventional type Class A vehicle (tractor, and semi-trailer, truck and trailer, etc.).

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- (g) Commercial vehicle operators or operators of vehicles requiring a special certificate must possess both the appropriate license and certificate and be in possession of a valid medical card.
- (h) The towing service and its drivers shall, at all times, keep itself fully informed and comply with all existing and future federal, state, and local laws and ordinances applicable to the towing service.
- (i) The tow service shall maintain a current list of drivers and shall furnish a copy of same to the OPD on, or before, the 10th day of each month. This list shall contain current information on owner(s) and drivers. They will furnish residence address, city, zip code, and phone numbers, date of birth, driver's license number, unit number, tow operator's permit number, date of permit, date of hire, date of current list and any other personnel information that may be requested by the police department. This information shall be supplied on a Towing Service Personnel Report (OPD Form T-77). A tow company representative must sign this form. False and/or misleading information is cause for termination. The list shall be legible and mailed to the police department, not faxed.
- (j) Drivers having a poor driving record and who remain in the employment of the towing service as drivers, when said towing service has knowledge of that driving or should have known, will constitute grounds for suspension or termination of the towing service from the rotation list. This includes drivers leasing equipment of said tow companies.
  - (a) A driving record reflecting more than three citations involving moving violations of the California Vehicle Code within the preceding two years constitutes a poor driving record.
  - (b) A driving record reflecting two convictions for driving while under the influence of intoxicating liquor or narcotic/drugs or both, or one conviction for driving under the influence of an intoxicating liquor or narcotic / drugs or both, while operating a tow truck, within the preceding two years constitutes a poor driving record.
  - (c) The OPD maintains strict drug and alcohol policies. Any tow truck driver found working under the influence of drugs or alcohol will be dismissed immediately or arrested.
- (k) The tow service will maintain a minimum of one driver on-duty at all times. In addition, at least one driver will be on stand-by at all times.
- (I) Operators of tow trucks shall be photographed, fingerprinted and a background investigation check conducted by the OPD. The tow driver shall obtain an operator's permit from the Business License Division of the Finance Department, in accordance with the current Orange Municipal Code. This permit shall be carried at all times while engaged in tow service operations, and shall be presented upon demand of police personnel or a citizen whose vehicle is being serviced or towed.
- (m) Tow drivers shall not enter into a closed roadway or closed accident/crime scene (i.e. cones, flares, barricades, crime scene tape or vehicles blocking roadway) until directed to do so by police personnel at the scene.

# Tow Company Guidelines and Rotation Tow Listing

## 502.4.3 GENERAL SPECIFICATIONS

- (a) Equipment limitations:
  - 1. All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.
- (b) Towing limitations:
  - 1. The criteria to determine the safe towing limits for a truck are,
    - (a) The total weight of the truck, including the lifted load, must fall within the Manufacturer's Gross Vehicle Weight Rating (GVWR) and not exceed either the Front or Rear Axle Weight Ratings (FAWR, RAWR),
    - (b) The truck must meet all applicable state and/or federal standards,
    - (c) For proper steering and braking, the front axle load must be at least 50% of its normal or unladen weight after the load is lifted.
- (c) Recovery equipment rating:
  - (a) The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30-degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).
    - (a) The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).
    - (b) Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers (SAE) Handbook, SAEJ706.
    - (c) All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction and rating as specified by the Original Equipment Manufacturer (OEM) for the equipment.
- (d) Safety chains:
  - 1. Safety chains shall be rated at no less than the rating specified by the OEM.
- (e) All tow trucks shall display signs on both sides containing the tow company name, one business address and telephone number. The signs shall be permanently affixed and in compliance with the requirements of refer to the California Vehicle Code.

## 502.5 RATES

(a) Fees charged for response calls originating from the Orange Police Department shall be reasonable. The fees charged will be contained in the City of Orange Tow Service Agreement.

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## Tow Company Guidelines and Rotation Tow Listing

- (b) The schedule of rates charged by the tow service shall be available in the tow truck and shall be presented upon demand to person(s) for whom the tow services were provided, or their agent, or any OPD officer at the scene.
- (c) The rate for towing shall be computed from portal to portal from the place of business. The time expended for towing shall be charged at a rate not to exceed the hourly rate. There shall be no additional charges for mileage, labor, etcetera. However, vehicles being towed out of the city may be charged additional fees (refer to the Tow Service Agreement). The customer will be charged a specified amount per mile from scene of pick-up to destination. Any secondary towing requested by the customer may be negotiated by the tow service in accordance with their private business practices. However, the tow service or their tow truck driver shall inform the customer if there is any difference in the rate for the secondary tow service and provide a general verbal estimate of what the final cost will be.
- (d) When a tow service responds to a police rotation call, whether or not the truck used is of the necessary class or greater to fulfill the duties as requested, the tow service shall only be compensated at the rate established for the lowest class of truck necessary to fulfill the duties required and not at the rate for the truck used to complete same.
- (e) Charges for the towing and storage of combination vehicles is considered excessive when one tow truck tows a truck tractor and a set of semi trailers, and the owner or their agent is charged for three separate tows. This is considered one tow. If a tow truck is sent to the scene of an overturned tractor/trailer rig and another tow truck is needed for clean-up and recovery operations, the tow service will be allowed to collect fees for the additional tow truck at the hourly rate for the class of tow truck and shall be billed in 15 minute increments. If three tow trucks are used (i.e. one tow for the truck tractor and one each for the semi trailers), the tow service will be allowed to collect fees for three separate tows.
  - 1. Charges for storage shall be based on the overall length of the combination of vehicles.

## 502.5.1 FEES FOR SPECIAL OPERATIONS

- (a) For special operations involving Class B, C, or D tow trucks, the tow service shall submit to the Orange Police Department the proposed fees for vehicle recovery operations and load salvage operations. Fees shall be reasonable and not in excess of those rates charged for similar services provided in response to requests initiated by any other public agency or private person. Charges in excess of one hour shall be charged in 15-minute increments.
- (b) Hourly rates shall be established for the following:
  - 1. Auxiliary equipment (i.e. air bags, converter gear/dolly, additional trailers, etc.),
  - 2. Contracted equipment (i.e. air bags, converter gear/dolly additional trailers, forklifts, scoop loaders, etc.),
  - 3. Hourly rates for contract labor:
    - (a) Personnel in excess of one driver per tow truck,

## Tow Company Guidelines and Rotation Tow Listing

- (b) Driver of customer vehicle (in lieu of towing this vehicle).
- (c) The police department shall approve the fees for these types of operations based upon prevailing rates for like services performed by other tow services within the county.
- (d) The tow service shall not participate in any special operations at the request of the police department unless their rates for special operations have been approved by the police department.
  - (a) A "vehicle recovery operation" is an operation involving the process of up-righting an overturned vehicle which would require the use of auxiliary equipment, due to size or location of the vehicle. This will normally be limited to operations requiring a Class B, C, or D tow truck.
  - (b) A "load salvage operation" is any operation involving the recovery of a load which has been spilled, or the off-loading and reloading of a load from an overturned vehicle performed in order to up-right the vehicle. This will be limited to operations involving a Class B, C, or D tow truck.
- (e) The total fees charged for after normal business hours (commonly known as a gate fee) release shall be at a flat rate as specified in the Tow Service Agreement, and shall only be allowed if there is no person on-duty at the storage facility for release and a call-back is required.
  - (a) An employee on-duty as a dispatcher or security guard shall be exempt as long as they are performing only their primary job duties.
  - (b) For the purposes of this policy, "normal business hours" shall be 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

## 502.5.2 STORAGE FEES

- (a) Storage fees shall be approved by the Orange Police Department based upon prevailing rates charged by other tow companies for like services within the county.
- (b) The tow service shall display, in plain view at all cashiers stations, a sign as described in the California Civil Code, disclosing all storage fees and charges in force, including the maximum storage rate.
- (c) Vehicles stored 24 hours or less shall be charged for no more than one day storage. Thereafter, each day of storage shall be calculated by calendar day.
- (d) The tow service or any employee, shall accept a valid bank credit card or cash, at the customer's discretion, for payment of towing and/or storage.

## 502.5.3 FINANCIAL RECORDS

(a) No contracted tow service or applicant shall be directly involved in the towing related business of any other contracted tow service or applicant within the City of Orange. Directly involved shall mean anything in common between contracted tow companies or applicants with regard to any of the following:

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- 1. Business licenses,
- 2. Insurance,
- 3. Tow truck or equipment ownership,
- 4. Employees.
- (b) Storage facilities owned by a towing service, and shared with another towing service, shall only be approved if the owner/operator charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof.
- (c) The sale or transfer of controlling interest in a company may terminate the agreement with the City of Orange without cause. Should termination occur, the new owner(s) may apply for rotation tow listing at the discretion of the city, at the beginning of a new contract.

## 502.5.4 BUSINESS RECORDS

- (a) The tow service shall maintain records of tow services furnished related to the execution of the tow service agreement, including a description of vehicles, nature of service, dates and times, location of calls, total itemized costs of towing and storage, and driver's name. The OPD may inspect all tow company records, without notice, during normal business hours. If requested by a tow service, the police department will furnish them with the computer-generated activity on the Police Rotation Tow List. All requests must be reasonable.
  - 1. Records shall be maintained and available for inspection for a period of two years plus the current term of the City Agreement.
- (b) The tow service shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable Public Utilities Commission (PUC) operating authorities, local operating authorities, Federal Communications Commission (FCC) licensing and non-Orange Police Department requested tows.

## 502.5.5 INSPECTIONS

- (a) Tow Trucks:
  - 1. Physical inspection indicates that the applicant's tow vehicles comply with all equipment and/or safety requirements of the California Vehicle Code, this policy and the Tow Service Agreement,
  - 2. Such inspection is to be conducted by the department's commercial enforcement officer, a Traffic Bureau supervisor, or his/her designee, on an annual basis. The California Highway Patrol may do this inspection. If so done, the inspection sheet will be forwarded to the Traffic Bureau for their files. If done by department personnel, the Tow Truck Inspection Guide shall be used. Tow trucks found in violation of the Vehicle Code shall be repaired immediately and shall not return to service until approved by the department's commercial enforcement officer, a Traffic Bureau supervisor, or his/her designee.

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- (b) Tow Facility:
  - 1. The OPD reserves the right to inspect tow service facilities and/or its equipment at any time. Inspections will, at a minimum, be conducted annually. However, inspections shall be conducted when the city contract expires and the tow service wishes to renew its agreement with the city. A formal report shall be filed on OPD Form T-75,
  - 2. Other city departments, county, state, and federal agencies may be called to assist with any inspection.
- (c) If any deficiencies and/or equipment violations are discovered, the tow service will be so advised in writing. The tow service will be given seven calendar days to rectify the deficiency and/or violation. This applies to all facilities or equipment, other than tow trucks, found in violation of the California Vehicle Code and damage to the fence or wall structures as previously noted in the current policy manual..
- (d) Failure to comply with the above requirements shall result in the tow service being suspended from the police department rotation list until the deficiency and/or violation is corrected.
- (e) Refusal to allow any inspection relating to tow trucks, equipment, administrative/billing site, storage facilities or business records, shall be cause for immediate suspension.

# 502.5.6 REMOVAL AND DISPOSAL OF DEBRIS

On traffic collision calls, each tow service shall clean-up and remove all debris from the collision as required by police personnel at the scene. No vehicle shall be moved, nor shall any debris be swept or picked-up, until the investigating officer or a supervisor has given approval to do so. Once removed, all debris shall be disposed of in a proper manner. In no event shall debris be deposited in the wrecked vehicles, left on the street or on the sidewalk.

- (a) Each tow truck that is approved for police towing shall have two metal trashcans with tightly secured or locking lids. One can will be used for trash and debris and the other shall contain sand or absorbent. Each can shall not have a capacity of less than 5gallons.
- (b) Hazardous material spills and related debris shall be handled by the Orange Fire Department. Minor oil, diesel and fuel spills will continue to be handled by the tow drivers. All state and federal EPA Guidelines shall be followed.

# 502.6 COMPLIANCE WITH LAW

- (a) The contractor and their tow truck drivers shall comply with federal, state and local laws and ordinances, which include, but are not limited to, the requirements included in this order.
- (b) Any felony conviction of the contractor or any actions by the contractor that would reflect unfavorably upon the OPD shall be cause for denial of an application or termination of the Tow Service Agreement.

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- (c) Any felony conviction of an employee or any actions by the employee that would reflect unfavorably upon the Orange Police Department shall be cause for the removal of the employee from the list of current OPD rotation tow truck drivers.
  - 1. Any contractor or employee charged with a felony crime shall be placed on administrative leave until the case is adjudicated.

#### 502.6.1 COMPLIANCE WITH AGREEMENT AND DEPARTMENTAL ORDER

- (a) The contractor must agree, as a condition of inclusion on the rotation tow list, to comply with the terms and conditions of this policy and the Tow Service Agreement. Furthermore, the contractor must agree that failure by the contractor or their agents to comply with these terms and conditions shall be cause for a written reprimand, suspension or termination. Orange Police Department personnel will investigate alleged violations of this policy or the Tow Service Agreement.
- (b) In order to remain on the rotation tow list, each contractor shall sign a copy of this policy indicating they have received a copy and have read and understood the rules, regulations and requirements.
  - 1. Said copy shall be placed in the contractor's tow file, in the Traffic Bureau of the OPD.

#### 502.6.2 DISCIPLINARY ACTIONS

- (a) Complaint investigation:
  - 1. The tow company liaison supervisor or his/her designee shall investigate and document all complaints against rotation tow contractors made by the public, OPD employees and allied agencies.
    - (a) The required documentation should include the following information:
      - 1. The identities of the tow service and/or tow driver(s), the complainant and any witnesses,
      - 2. A brief summary of the nature of the complaint,
      - 3. A listing of all pertinent facts,
      - 4. A listing of the conclusions reached as a result of the investigation.
    - (b) The tow service shall be notified of the findings within 30 calendar days following completion of the complaint investigation.
    - (c) If, during the course of an investigation, the contractor severs its relationship with the OPD, the investigation of the complaint will continue until completed.
      - 1. The report and findings will be retained for five years.
    - (d) All records concerning violations of the agreement shall be retained for a period of five years from the date of the violation.

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- (b) Disciplinary action:
  - 1. Disciplinary action for violations of this policy, the Tow Service Agreement, or any federal, state or local ordinances may result in a written reprimand, suspension or removal.
- (c) Demerit point system:
  - 1. The tow company liaison supervisor or Tow Review Board may apply administrative sanctions depending on the type of offense and or misconduct. Sanctions shall remain on the contractor's record for the life of the current contract.
- (d) The following demerit point schedule shall be used when applying administrative sanctions.
  - 1. Criminal misdemeanors
    - (a) Each Violation = 50 demerit points
  - 2. Vehicle Code misdemeanors
    - (a) Each Violation = 50 demerit points
  - 3. Vehicle Code misdemeanor equipment violations
    - (a) Each Violation = 10 demerit points
  - 4. Vehicle Code infraction
    - (a) Each Violation = 5 demerit points
  - 5. Vehicle Code critical item equipment violations
    - (a) The following equipment violations are subject to ten (10) demerit points per violation:
      - 1. Any steering components worn or defective,
      - 2. Brake lights not working on tow truck or drag lights, when towing a vehicle,
      - 3. No low-air warning device on the air brake system,
      - 4. Brake lines or hoses that are worn or defective,
      - 5. Brakes out of adjustment by 20% or more,
      - 6. Defects in the frame of the vehicle or in the tow bed of the vehicle,
      - 7. Any cracks in wheel rims,
      - 8. Worn or defective winch cable,
      - 9. Overhead warning lights missing or defective,
      - 10. Parking brake system defective or not adequate for load or grade,
      - 11. Winch not properly secured to vehicle (cracks in welds or loose bolts),

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- 12. Wheel lift assembly defective,
- 13. Bed safety locks worn, damaged or missing,
- 14. Safety chains worn or damaged,
- 15. Front tires worn less than 2/32 of tread,
- 16. Air loss (unapplied) 2 PSI per minute for three vehicles or more in combination,
- 17. Air loss (applied) 3 PSI per minute single vehicle, 4 PSI per minute for combination of two vehicles, or 6 PSI per minute for three vehicles or more in combination.
- 6. Criminal felonies administrative leave until case is adjudicated.
  - (a) If the case results in a conviction, the contractor will immediately be released from the contract.
- 7. Public service citizen complaints (sustained)
  - (a) 25 demerit points per violation
- 8. Administrative infractions (refer to the policy manual regarding Tow Company Guidelines and Rotation Tow Listing, and the Tow Service Agreement)
  - (a) 15 demerit points per violation
- (e) The tow service liaison supervisor or Tow Board shall have the authority to increase demerit points based upon the severity of the circumstances or frequency of similar violations.
- (f) Demerit points shall be removed from the tow company's records after one year from date of violation.
- (g) Suspension schedule
  - 1. 100 demerit points = 30 days suspension
  - 2. 150 demerit points = 60 days suspension
  - 3. 200 demerit points = Removal from rotation list
    - (a) Once removed, the tow service will not be allowed to reapply for the rotation tow list for a period of five years from the date of removal.
- (h) A violation of overcharging shall be cause for immediate suspension. The Chief of Police or his/her designee shall determine the period of the suspension. The suspension will remain in effect until the period of suspension is completed and the tow service presents proof that reimbursement has been made to the aggrieved customer(s).
- (i) A violation of the Bi-annual Inspection of Terminals (BIT) Program requirements shall be cause for immediate suspension. The Chief of Police or his/her designee shall determine the period of the suspension. The suspension will remain in effect until the period of suspension is completed and the tow service presents proof of compliance with the BIT requirements.

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- (j) Failure of the tow service to reimburse the vehicle or property owner for damage or loss that occurred while the vehicle was in their possession shall result in a suspension. The Chief of Police or his/her designee shall determine the period of suspension. The suspension will remain in effect until the period of suspension is completed and the tow service has presented proof of reimbursement.
- (k) Nothing herein shall be deemed to prohibit the police department from immediately suspending any tow operator/contractor whose conduct, or conduct of their employee(s), is deemed to be a danger to the motoring public, or who has engaged in conduct constituting a gross violation of this policy and/or the City Tow Service Agreement.
- (I) Any violation of this policy by a tow driver or towing service shall be documented on OPD Form T-76 and forwarded to the Traffic Bureau for administrative follow-up. The public shall be given OPD Form T-79 for citizen complaints.
- (m) When a formal complaint is filed with the OPD, the tow company liaison supervisor or his/her designee shall, within ten working days, mail, fax or deliver to the affected tow service a copy of OPD Form T-76 or T-79, or a letter informing the owner(s) of the complaint(s).
- (n) The tow service shall respond to the complaint(s) in writing within ten working days upon notification of a complaint. Any and all documents related to the complaint(s) shall be submitted with the tow company's formal response letter.
  - (a) **EXCEPTION:** No documents or notice shall be mailed, faxed or delivered if it is determined that notification will impede or interfere with a police investigation.
- (o) After careful review of the tow service response by the Traffic Bureau sergeant, the police department shall notify the tow service in writing of any proposed disciplinary action. The tow service may request, in writing to the Chief of Police and within seven calendar days of the receipt of the notification, a review by the Towing Review Board.
- (p) The police department shall schedule the review meeting as soon as practicable and in no case beyond seven days from the request for a review.
- (q) If the tow service (operator/contractor) fails to request a review or fails to attend a scheduled review meeting, the proposed sanction(s) will take effect immediately, or as scheduled.

## 502.6.3 TOWING REVIEW BOARD

- (a) The City of Orange Towing Review Board has been created and empowered to examine misconduct or offenses by contract tow providers.
  - 1. The Board shall consist of a Traffic Bureau lieutenant, a Traffic Bureau sergeant and City of Orange purchasing officer or his/her designee. The investigator may be included, if requested by the Traffic Bureau lieutenant.
  - 2. If legal counsel represents the tow service, the towing service shall inform the Board (OPD or General Services) in writing at least five working days prior to

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## Tow Company Guidelines and Rotation Tow Listing

their scheduled hearing. The City Attorney's Office shall be notified and may represent the city during the review process.

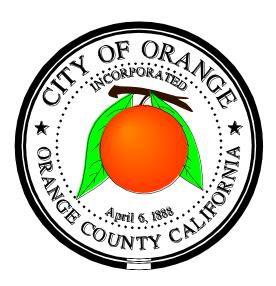
- (b) The following shall apply to the conduct of the review meeting:
  - 1. The review is an informal administrative hearing,
  - 2. The reviewing officer should tape record the review meeting and provide a copy of the tape recording to the tow operator or their attorney upon request,
    - (a) Appropriate fees may be charged for the copy of the tape recording.
    - (b) The appellant may tape record the review.
  - 3. The appellant may present testimony of related experts, tow truck association representatives, or other qualified persons,
    - (a) Witnesses shall limit their testimony to the facts of the case being heard.
  - 4. The appellant may present evidence on their behalf,
    - (a) This evidence must relate directly to the facts being considered.
  - 5. The reviewing officer should utilize the department's investigative report of the case being heard rather than the direct testimony of the department's witnesses,
  - 6. After reviewing the case, the Board shall either sustain, not sustain or unfound the allegation(s) charged,
  - 7. Based on its findings, the Board may concur with the disciplinary action recommended by the Tow Company Liaison Supervisor or may increase or decrease the penalty, or reinstate to the police rotation tow list,
  - 8. The Board's decision shall be presented to the Chief of Police or his/her designee for review. The Chief of Police or his/her designee may concur with the Board's findings, modify the recommended sanctions, or take any other reasonable action necessary to protect the public and uphold the integrity and professional image of the City of Orange and the OPD,
  - 9. The police department shall notify the tow service, in writing, of its decision within seven calendar days of the date of the hearing.

# Tow Contract Evaluation Scoring - Attachment A

Tow Company Archie's Towing	Tow Yard (30 points max) 30	Evidence Holding (15 points max) 12.75	Trucks (25 points max) 25	Drivers (15 points max) 15	<b>Misc</b> (15 points max) 13.875	Total Average Score 96.625
Tows R Russ	27.5	15	25	15	12.625	95.125
Southside Towing	29	15	25	15	8.6	92.6
Alberto's Towing	14.25	0	16.875	15	10	56.125

# REQUEST FOR PROPOSAL NO. 20-21.39 FOR

# **Towing and Storage Services**



City of Orange

Issue Date Thursday, March 4, 2021

Response Due Date/Time Thursday, April 1, 2021, by 2:00 PM PT

CAUTION

THIS DOCUMENT MUST REMAIN IN TACT

# **CITY OF ORANGE**

# **REQUEST FOR PROPOSAL NO. 20-21.39**

The City of Orange is soliciting proposals from qualified consulting firms to provide Towing and Storage Services.

This Request for Proposal is set out in the following format:

 SECTION I
 Introduction and Instructions to Responders
 SECTION II
 Proposal Response Requirements
 SECTION III
 Scope of Work
 SECTION IV
 Evaluation Process/Criteria for Evaluation
 SECTION V
 Cost Proposal
 Attachment A: Contract Process and Requirements for Official Police Towing and Storage Services
 Attachment C: Cost Proposal for Towing and Storage Services
 Attachment B: Proposer's Qualification Statement
 Attachment D: Sample of the Official Police Towing and Storage Agreement
 Attachment F: Standard Terms and Conditions
 Attachment H: Insurance Requirements

<u>Proposals are due by 2:00 P.M. PT, Date: 04/01/2021.</u> Proposals must be submitted in sealed packages. See complete instruction in Section I, Item C.

All questions and inquiries related to contract terms and conditions contained within this Request for Proposal ("RFP") should be submitted by email to Wanda Alvarez, Purchasing Officer at walvarez@cityoforange.org. All questions and inquiries related to scope of work requirements contained within this Request for Proposal ("RFP") must be directed to Sergeant Trevor Cullen, 714-744-7323, tcullen@orangepd.org. Responders shall not contact other city personnel with any questions or clarifications concerning this RFP.

The City Purchasing Officer will initiate all official communications concerning this RFP. Any city response relevant to this RFP other than through, or approved by, the City's Purchasing Officer is unauthorized and will be considered invalid.

Interested parties should subscribe to receive RFP updates and notifications via the City's website <u>https://www.cityoforange.org/Bids.aspx?CatID=17</u> (two-step verification required) as well as emailing <u>tcullen@orangepd.org</u> to be added to the contact list for this specific RFP to receive updates, addendums, and additional information.

It is the responsibility of the interested parties to request being added to the bidder's list and to check the website frequently to look for any additional updates.

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- D. Validity of Proposal
- E. Certification of Understanding
- F. Statement of Compliance
- G. Resumes & Qualifications of Responder's Personnel
- H. Work Plan
- I. Fee
- J. Related Experience and References
- K. Resources to be Provided by the City
- SECTION III: SCOPE OF WORK

## SECTION IV: EVALUATION PROCESS/CRITERIA FOR EVALUATION

SECTION V: COST PROPOSAL

## SECTION I: INTRODUCTION AND INSTRUCTIONS TO RESPONDERS

#### A. Introduction

The City of Orange hereby invites qualified consulting firms to submit a proposal to Towing and Storage Services.

The Responder is expected to provide all the materials and services that will fulfill or exceed the requirements and conditions as set forth in this RFP.

#### B. <u>Schedule</u>

The City reserves the right to make changes to the below schedule, but generally plans to adhere to the implementation of this bid process as follows:

RFP released:	Date: Thurs.	03/04/2021
Deadline for receiving questions:	Date: Thurs.	03/18/2021 5:00 pm P.T.
Response to questions:	Date: Thurs.	03/25/2021 5:00 pm P.T.
Proposals due:	Date: Thurs.	04/01/2021 2:00 pm P.T.
Consultant selected:	Date: TBD	
Contract approved by City Council (if required):	Date: Thurs.	07/01/2021

#### C. Instructions to Responders and Procedures for Submittal

- 1. All prospective Responders shall submit their proposals by the deadline either or by courier or in person.
  - a. Proposals sent via courier or USPS mail, are to be properly identified on the outside and are due by <u>2:00 P.M. PT</u> on Thursday, 04/01/2021, and shall be delivered in a sealed package(s) to:

RE: RFP No. 20-21.39 City Clerk – Purchasing Division City of Orange 300 E. Chapman Avenue Orange, California 92866

- b. If proposals are sent via Untied States Postal Service (USPS) mail, please be advised that the City picks up mail from the Post Office at 7:00 am each work day. Delivery to a Post Office on the day prior to due date will not result in a timely submittal. Remember to ask the postal clerk for assistance.
- c. Proposals must be clearly identified by proposal number and sent in a sealed package. It is the responsibility of the Responder to ensure timely delivery is made to the City Clerk in the City of Orange.
- Proposals must be valid for a period of 120 calendar days from the Closing Date and Time for Receipt of Proposals. No Proposal may be withdrawn after the submission date.

- Each Responder must provide three (3) bound copies and one (1) unbound copy of its proposal, including a completed copy of the Requirements document; the Proposer's completed Vendor Cost Worksheet should be provided as a separate document (not bound with the other documents). One bound copy is to be clearly marked as "original" on the outside cover and contain an original signature. An electronic (soft) copy on a USB drive or other standard digital storage device is also required, including all submission components; the Vendor Cost Worksheet must be provided in *native Excel format (not PDF)*.
- 4. All Proposals shall be submitted on standard 8.5 x 11 inch paper. All pages should be numbered and identified sequentially by section. Proposals must be tabbed and indexed in accordance with the information requested in Section II. It is imperative that all Responders responding to this RFP comply exactly and completely, with the instructions set forth herein. All responses to this RFP shall be word processed (except where otherwise provided or noted), concise, straightforward and must fully address each requirement and question.
- 5. The Responder's Proposal must not be marked as confidential or proprietary. The City may refuse to consider a Proposal so marked. Information in Proposals shall become public property and subject to disclosure laws. All Proposals shall become the property of the City. The City reserves the right to make use of any information or ideas in the Proposals.
- 6. By submitting a Proposal, the Responder represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of providing and performing quality work to achieve the City objectives.
- 7. Pre-contractual expenses are defined as expenses incurred by the Responder in:
- 8. preparing its Proposal in response to this RFP;
- 9. submitting that Proposal to the City;
- 10. negotiating with the City any matter related to the Responder's Proposal; and
- 11. any other expenses incurred by the Responder prior to the date of award and execution, if any, of the Agreement.
  - a. The City shall not, in any event, be liable for any pre-contractual expenses incurred by Responders in the preparation of their Proposal.
- 12. Each Responder must submit its Proposal in strict accordance with all requirements of this RFP and compliance must be stated in the Proposal. Deviations, clarifications, and/or exceptions must be clearly identified and listed separately as alternative items for the City's consideration.
- 13. Each Responder is encouraged to be responsive to the requirements stated in this RFP. If, however, any Responder feels that it can offer substantial cost/benefit and/or performance advantages, the City of Orange will consider and may accept alternate Proposals. Alternate Proposals must specify how they deviate from the requirements and

describe cost reduction or other benefits to be achieved. Alternate Proposals must be submitted as separate Proposals clearly marked "alternate" on the outside cover.

- 14. After the Closing Date and Time for Receipt of Proposals, evaluation and proposal clarification will commence.
- 15. In the event the City deems it necessary to clarify or make any changes to this RFP, these changes shall be made in the form of a written addendum authorized and issued only by the City Purchasing Officer or authorized designee.
- 16. The City reserves the right to negotiate modifications with any Responder as necessary to serve the best interest of the City. Any Proposal may be rejected if it is conditional, incomplete or deviates from specifications in this request. The City reserves the right to waive, at its discretion, any procedural irregularity, immaterial defects or other improprieties, which the City deems reasonably correctable or otherwise not warranting rejection of the Proposal. Any waiver will not excuse a proponent from full compliance.
- 17. The City reserves the right to:
  - negotiate the final Agreement with any Responder(s) as necessary to serve the best interest of the City of Orange;
  - withdraw this RFP at any time without prior notice and, furthermore, makes no representations that any contract will be awarded to any Responder responding to this RFP; or
  - award its total requirements to one Responder or to apportion those requirements among two or more Responders as the City may deem to be in its best interest.

In addition, negotiations may or may not be conducted with Responders; therefore, the Proposal submitted should contain the Responder's most favorable terms and conditions, since the selection and award may be made without discussion with any Responder.

18. Where two or more Responders desire to submit a single proposal in response to this RFP, they should do so on a prime/sub-contractor basis rather than as a joint venture. The City intends to contract with a single firm and not with multiple firms doing business as a joint venture

## SECTION II: PROPOSAL RESPONSE REQUIREMENTS

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content with sufficient detail to allow for accurate evaluation and comparative analysis. Responses must provide the required information in the following order for each underscored item: Responders shall respond by repeating the section and sub-sections number(s) and statement/question and by providing the appropriate response hereunder.

## A. <u>Cover Letter</u>

All Proposals <u>must</u> be accompanied by a cover letter, signed by an individual authorized to bind the proposing entity. <u>An unsigned Proposal submission is</u> grounds for rejection.

## B. <u>Company Data</u>

Each Responder shall submit the following information:

- 1. State the company's official name and address and the names and titles of its principal officers; indicate what type of entity, such as corporation, partnership, joint venture, sole proprietorship, etc. and indicate if the firm is incorporated.
- 2. Provide the firm's Federal Employer I. D. Number.
- 3. Provide the name and address of the person to receive notices who is authorized to make decisions and represents the company. Specify in what capacity the person shall be representing the entity and any limitations to their authority.
- 4. Furnish the complete firm's address for any mailed funds.
- 5. State any failures or refusals to complete any contracts and a complete explanation.
- 6. Indicate the number of years in business under the present business name.
- 7. Indicate the number of years of the firm's experience in providing required, equivalent or related products and services.
- 8. Submit a detailed statement indicating whether the Responder is totally or partially owned by another business organization or individual that will be providing the services to meet the requirements of the Proposal.
- 9. Submit a detailed statement indicating whether the Responder totally or partially owns any other business organization that will be providing the services to meet the requirements of the Proposal.

## C. <u>Certificate of Insurance</u>

The Responder shall demonstrate the willingness and ability to provide the required insurance coverage as set forth by City requirements within ten calendar days of notification of selection for award of this Agreement.

## D. <u>Validity of Proposal</u>

The Responder shall state the length of time for which the submitted Proposal shall remain valid. The City requires a period of at least 120 calendar days.

#### E. <u>Certification of Understanding</u>

The City assumes no responsibility for any understanding or representation made by any of its officers or agents during or prior to the execution of any Agreement resulting from this RFP unless:

- 1. such understanding or representations are expressly stated in the Agreement; and
- 2. the Agreement expressly provides that the responsibility therefore is assumed by the City. Representations made but not so expressly stated and for which liability is not expressly assumed by the City in the Agreement shall be deemed only for the information of the Responder.

#### F. <u>Statement of Compliance with Agreement's Articles/Terms and Conditions</u>

Include either a statement of compliance with all parts of this Request for Proposals and/or a listing of exceptions and suggested changes.

- 1. Proposal must certify either (a) or (b) below:
  - a) This Proposal is in compliance with said Request for Proposal information.
  - b) This Proposal is in compliance with said Request for Proposal information, except for those proposed exceptions *listed in a separate attachment hereto.*
- 2. The attachment **must** include, for each proposed exception:
  - a) the suggested rewording;
  - b) reasons for submitting the proposed exception; and
  - c) any impact the proposed exception may have on cost, scheduling or other areas.

#### G. <u>Resumes and Qualifications of Responder's Personnel</u>

Provide the resumes of the project manager and key personnel who will be assigned to this project. Resumes shall contain information relating to each person's education, experience or training in the area covered within this proposal.

## H. <u>References</u>

The Responder shall include at a minimum, a list of three applicable, preferably local government references.

## I. Work Plan

List all tasks, major project milestones, approximate number of weeks to complete each task, and anticipated completion timeframe to complete the study. Describe how each task is to be accomplished, and identify team members responsible for completion of specific products that will be produced. The work plan should address and satisfy the objectives and specifications as listed in the Scope of Work in this RFP.

## J. <u>Fee</u>

Provide the proposed cost in the cost proposal section.

#### K. <u>Related Experience and References</u>

Include a list of other user fee studies that were performed by the firm during the past five years. In addition, the Responder shall provide at a minimum, a list of five applicable references, preferably located in California, municipalities or applicable government operations, which were provided with these types of services.

## L. <u>Resources to be Provided by the City</u>

List any resources, City assistance, or other items expected to be provided by the City.

#### M. <u>Evaluation Process and Criteria Process</u>

A selection committee, made up of City staff, will make final recommendations for selection. The City reserves the right to reject any and all proposals and to make its selection on a discretionary basis. However, the selection committee will evaluate proposals primarily on the criteria specified sin General Specifications.

## N. <u>Selection/Award Procedures</u>

A Contract Agreement will be proposed for execution. It may be modified to incorporate other pertinent Articles/Terms and Conditions set forth in this RFP, including those added by addendum, and to reflect the Responder's offer or the outcome of contract negations, if any, conducted with the Responder's. Exceptions to the terms and conditions of the proposed contract, or the Responder's inability to comply with any of the provisions of the proposed contract, are the to be declared in the Proposal.

## SECTION III: SCOPE OF WORK

Official Police Towing Service (OPTS) refers to any towing company selected by the City to be used on-call and on a rotational basis for any police situation where a tow truck is required. Typical towing situations will include, but are not limited to: removing illegally parked vehicles, towing inoperative vehicles as a result of traffic collisions or mechanical breakdowns and storing or impounding of vehicles for investigations, evidence or violation of law. The towing service must provide towing and storage services 24 hours a day, 7 days a week, 365 days a year.

The towing service must maintain adequate authorized personnel, equipment and facilities at all times during the duration of the agreement period.

See attachments for exact qualifications:

Attachment A: Contract Process and General Requirements for Official Police Towing and Storage Services

Attachment D: Sample of the Official Police Towing and Storage Agreement

Attachment E: Orange Police Department Policy 502

#### SECTION IV: EVALUATION PROCESS/CRITERIA FOR EVALUATION

All prospective tow companies meeting the general requirements will be inspected and evaluated within twenty (20) days of receipt of all completed RFP's. A committee of Police Department and City personnel will examine the proposals for completeness of information and required attachments. The committee will visit and inspect the proposer's trucks and facility.

The committee will score each proposal using the following categories and points:

1.	Service Requirements	25 Points
2.	Facility and Equipment Requirements	25 Points
3.	Qualifications of Personnel	20 Points
4.	Prior Experience	10 Points
5.	Accident and Damage Claims History	10 Points
6.	References	10 Points
MAXIN	/IUM TOTAL POINTS =	100 Points

#### SECTION V: COST PROPOSAL

See Attachment C Current Fee Schedule for Contracted Tow Companies.

#### SECTION VII: ATTACHMENTS

Attachment A: Contract Process and Requirements for Official Police Towing and Storage Services

Attachment C: Cost Proposal for Towing and Storage Services

Attachment B: Proposer's Qualification Statement

- Attachment D: Sample of the Official Police Towing and Storage Agreement
- Attachment E: Orange Police Department Policy 502
- Attachment F: Standard Terms and Conditions

Attachment G: Certificate of Non-Collusion

Attachment H: Insurance Requirements



# Agenda Item

**City Council** 

Item #: 10	).1. 11/9/2021	File #: 21-0574
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Susan Galvan, Interim Community Development Direct	or

# 1. SUBJECT

Continued Public Hearing to consider an ordinance amending Titles 16 and 17 of the Orange Municipal Code to establish development standards and streamlined subdivision and entitlement procedures for small lot subdivisions in multi-family residential and neighborhood mixed use zones. (Continued from September 14, 2021)

# 2. SUMMARY

The City of Orange has prepared a Small Lot Subdivision Ordinance and associated guidelines to provide more flexible development standards and streamlined procedures for the development of contextually compatible single-family residential housing units on infill sites with multi-family and mixed use zoning.

# 3. **RECOMMENDED ACTION**

- 1. Introduce and conduct First Reading of Ordinance No. 15-21. An Ordinance of the City Council of the City of Orange amending Title 16 and Title 17 of the Orange Municipal Code relating to regulation of small lot subdivisions.
- 2. Adopt Resolution No. 11354. A Resolution of the City Council of the City of Orange approving Small Lot Subdivision Guidelines.

## 4. FISCAL IMPACT

None.

# 5. STRATEGIC PLAN GOALS

Goal 3. Enhance and promote quality of life in the community.

c. Support and enhance attractive, diverse living environments.

# 6. DISCUSSION AND BACKGROUND

With growing frequency, the Planning Division receives inquiries about site redevelopment involving compact arrangements of detached, for sale, single-family housing units. In most cases, the zoning for the sites is multi-family residential. The desired small lot development format and single-family product type are not easily accommodated by the current development standards in the Zoning Ordinance. As a result, representative projects that experienced a lengthy entitlement process in Orange include the MBK Homes/Irving House and Cohen Residential projects at Orange-Olive Road and Grove Avenue.

Item #: 10.1.

The purpose of the subject ordinance is to provide development standards to accommodate compact single-family neighborhood formats and to streamline the entitlement process for projects on small parcels in multi-family residential and mixed-use zones. The ordinance was crafted to facilitate development and provide pragmatic, context-sensitive standards. Staff solicited input and "lessons learned" from stakeholders representing the development community that have been important aspects of informing the work effort.

The Small Lot Subdivision Ordinance (Attachment 1) amends Title 16 and Title 17 of the Orange Municipal Code and includes the following key features:

- Applies only to properties located in Multi-Family Residential zones (R-3 and R-4) and the Neighborhood Mixed Use-24 zone (NMU-24) where the underlying General Plan land use designations are intended to accommodate multi-family residential development at a maximum density of 24 units per acre.
- Streamlines the entitlement process to authorize Planning Commission approval of tentative tract maps (five or more lots) rather than City Council approval for projects that do not require preparation of an EIR.
- Provides development standards to accommodate small lot homes for infill developments related to:
  - Building setbacks
  - o Building height
  - Lot coverage
  - Open space
  - Parking
  - o Wall height

A comparison of existing and proposed development standard highlights, and detailed review of the Ordinance is provided in Attachment 6.

## Relationship to SB 9

Senate Bill (SB) 9 that takes effect in January 2022 will not apply to properties developed as small lot subdivisions under the provisions of the proposed ordinance. SB 9 applies only to properties with single-family (R-1) zoning. The proposed Small Lot Subdivision Ordinance applies only to properties with multi-family (R-3 or R-4) and mixed use zoning (NMU-24). While the housing type created through a small lot subdivision is a single-family detached product, the zoning remains multi-family or mixed-use therefore these properties would not be subject to SB9 development standards.

## Affected Areas and Context

Properties with R-3 and R-4 zoning are distributed through much of the north, south, west, and central portions of the city. NMU-24 properties are concentrated along the South Main Street corridor between Almond and La Veta Avenues. Sites are largely developed, with only a limited number of scattered vacant parcels throughout the City falling under the three zoning districts. Developed properties range in age and condition. In some instances, properties may be developed with long-

standing commercial uses despite the residential zoning or general plan designations. Therefore, it is difficult to anticipate which properties are most likely to be identified as candidates for redevelopment using the proposed Small Lot Subdivision Ordinance and Guidelines. It is now common for staff to receive inquiries about redevelopment of sites where no change has been anticipated. The previously referenced MBK Homes/Irving House and Cohen Residential projects are examples of this.

Properties that would be eligible to take advantage of the proposed ordinance are generally surrounded by established development ranging from single-family, multi-family to commercial uses. Therefore, the ordinance and related guidelines have been crafted to provide staff with the "tools" needed to achieve a site plan and building design that result in a project that is integrated with, and appropriate for, its surroundings. The proposed ordinance and guidelines strive to produce a new neighborhood "component" rather than a housing tract that is isolated and walled off from its surroundings. Application of typical multi-family zoning generally results in a housing product with an internal orientation that is distinctly separated from surrounding properties. The Small Lot Subdivision Ordinance and Guidelines provide an option for an alternative development format. A representative comparison of a traditional multi-family apartment vs. small lot subdivision site plan is provided in Attachment 8.

It should be noted that some of the R-3 and R-4 zoned parcels are located within the Old Towne Historic District. Any projects that may come forward in Old Towne would continue to be subject to the City's Historic Preservation Design Standards. The type of product envisioned in the context of Old Towne would be a modern-day bungalow court.

### Small Lot Subdivision Guidelines

The Small Lot Subdivision Guidelines (Attachment 3) are intended to guide the site layout and building design in order to ensure that the new small lot subdivisions are compatible with existing adjacent neighborhoods. Key content that is intended to address contextual compatibility includes:

- Scale and massing
- Building orientation
- Building articulation
- Roof forms
- Stepped upper stories
- Access and connectivity to established neighborhood

A detailed discussion of the Guidelines is provided in Attachment 6.

#### Planning Commission Review

At its July 19, 2021, meeting the Planning Commission unanimously recommended that the City Council adopt Ordinance No. 15-21 and the Small Lot Subdivision Guidelines.

# 7. ATTACHMENTS

- Attachment 1 Ordinance No. 15-21
- Attachment 2 Ordinance No. 15-21 (Redlined)
- Attachment 3 Resolution No. 11354 (Including Small Lot Subdivision Guidelines)
- Attachment 4 Planning Commission Resolution No. PC 17-21
- Attachment 5 Planning Commission Resolution No. PC 18-21
- Attachment 6 Planning Commission Staff Report July 19, 2021
- Attachment 7 Planning Commission Minutes July 19, 2021
- Attachment 8 Comparative Representative Site Plans



# Agenda Item

City Council

Item #: 10	0.1. 11/9/2021	File #: 21-0574
TO:	Honorable Mayor and Members of the City Council	
THRU:	Thomas R. Hatch, Interim City Manager	
FROM:	Susan Galvan, Interim Community Development Direct	or

# 1. SUBJECT

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## 4. FISCAL IMPACT

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# 5. STRATEGIC PLAN GOALS

Goal 3. Enhance and promote quality of life in the community.

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It should be noted that some of the R-3 and R-4 zoned parcels are located within the Old Towne Historic District. Any projects that may come forward in Old Towne would continue to be subject to the City's Historic Preservation Design Standards. The type of product envisioned in the context of Old Towne would be a modern-day bungalow court.

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- Roof forms
- Stepped upper stories
- Access and connectivity to established neighborhood

A detailed discussion of the Guidelines is provided in Attachment 6.

#### Planning Commission Review

At its July 19, 2021, meeting the Planning Commission unanimously recommended that the City Council adopt Ordinance No. 15-21 and the Small Lot Subdivision Guidelines.

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#### **ORDINANCE NO. 15-21**

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING TITLE 16 AND TITLE 17 OF THE ORANGE MUNICIPAL CODE RELATING TO REGULATION OF SMALL LOT SUBDIVISIONS.

WHEREAS, small lot subdivision development provides an alternative housing type to larger scale condominiums and apartments in multi-family residential zones and some mixed use zones, and is particularly well-suited in transitional areas between established neighborhoods developed with single-family homes and other more intensive residential or commercial uses;

**WHEREAS,** this Small Lot Subdivision Ordinance will allow for development of smaller single-family residential lots in the multi-family residential zones (R-3 and R-4) and in the Neighborhood Mixed Use - 24 zone (NMU-24), consistent with existing permitted densities;

**WHEREAS,** this Ordinance will provide a space-efficient and economical alternative to traditional options for homeownership in the City of Orange and potentially create opportunities for affordable homeownership through lower land costs;

**WHEREAS**, the Planning Commission conducted a duly advertised public hearing on July 19, 2021, at which time interested persons had an opportunity to testify either in support of or in opposition to the proposed Ordinance and recommended its approval to the City Council;

**WHEREAS,** the City Council conducted a duly advertised public hearing on September 14, 2021, at which time interested persons had an opportunity to testify either in support of or in opposition to the proposed Ordinance; and

**WHEREAS,** the City Council finds that the proposed Ordinance will serve the public health, safety, and welfare of the City.

# NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

#### **SECTION I**:

The recitals stated above are true and correct, incorporated herein, and form the basis for the adoption of this Ordinance.

#### **SECTION II:**

The action proposed herein is not a project subject to CEQA in accordance with CEQA Section 21065 and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), and 15378. The Ordinance involves general policy and procedure making that would not cause either a direct

physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Furthermore, the action is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Such is the case with the Ordinance. No new development is proposed and the regulations for small lot subdivisions would generally allow for infill development, which would not result in a significant impact on the environment. Furthermore, any development applications subject to these provisions will be reviewed for CEQA compliance under a separate entitlement. On a case-by-case review of each project, the appropriate environmental document will be prepared to address any project-specific impacts. Therefore, the Ordinance will not have a significant effect on the environment.

### **SECTION III:**

Section 16.04.060 of the Orange Municipal Code, "Subdivisions – General Provisions – Advisory Agencies," is hereby amended in its entirety to read as follows:

#### 16.04.060 – Advisory Agencies.

Advisory agencies are charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property and the imposing of requirements or conditions thereon. The Community Development Director is designated as the advisory agency as that term is used in the Subdivision Map Act and in this title. Subject to the provisions and according to the procedures of this title, such agency shall make reports and recommendations to the City Planning Commission on all tentative and final tract maps.

#### **SECTION IV:**

Section 16.12.010 of the Orange Municipal Code, "Subdivisions – Procedure – Tentative Tract Map," is hereby amended in its entirety to read as follows:

#### 16.12.010 – Tentative Tract Map.

A. A tentative tract map, accompanied by any forms and fees required, shall be submitted to the Community Development Director for review. The Community Development Director shall refer the map to a staff review committee as designated by the City Manager for review and comment.

B. After the tentative tract map is reviewed by staff, the Community Development Director shall forward the map to the City Planning Commission with his/her comments and/or recommendations. Within fifty (50) days of the submittal of the tentative tract map to the Community Development Director, the City Planning Commission shall review the tentative tract map and shall approve, conditionally approve, or disapprove the tentative tract map.

C. If the map is not approved by the City Planning Commission, the subdivider will be notified and given the opportunity to correct the map.

D. The subdivider may appeal to the City Council from any action taken by the City Planning Commission pursuant to the procedure set forth in the Subdivision Map Act.

E. Any interested person adversely affected by a decision of the Planning Commission may file a complaint with the City Council concerning any such decision. Processing of the complaint shall comply with the Subdivision Map Act.

F. If the map is approved by the City Planning Commission, or by the City Council on appeal, a final tract map, substantially in conformance with the tentative tract map, must be recorded within eighteen (18) months.

## **SECTION V:**

Section 17.14.270, "Zoning – Residential Districts – Small Lot Subdivision Development Standards," Table 17.14.270, "Small Lot Subdivision Development Standards," and Section 17.14.275, "Zoning – Residential Districts – Small Lot Subdivision Guidelines," are hereby added to the Orange Municipal Code to read as follows:

#### 17.14.270 – Small Lot Subdivision Development Standards.

A. The purpose of this section is to provide supplemental development standards allowing alternative housing typologies in small lot subdivisions within multiple-family residential zones and specific mixed use zones. A subdivision for the purpose of small lots enables construction of new small lot homes and provides a space-efficient and economical alternative to traditional single dwelling unit and multiple dwelling unit development. It also provides pedestrian-friendly developments that are compatible with the existing neighborhood character and context.

B. A small lot subdivision shall be permitted in the R-3, R-4, and NMU-24 zoning districts pursuant to an approved tract or parcel map.

C. The following supplemental regulations shall apply to small lot subdivisions:

(1) A tract map or parcel map pursuant to Chapter 16.08 (Maps) of this code shall be required for the creation of a small lot subdivision.

(2) The Design Review Committee shall review small lot subdivision projects prior to issuance of any demolition, grading, or building permit and make a finding that the small lot subdivision project complies with the small lot subdivision guidelines in Section 17.14.275 of this chapter. The application for design review shall be filed concurrent with the tract or parcel map application.

(3) A small lot subdivision development shall comply with the regulations in Table 17.14.270 and the supplemental regulations in this section. The footnotes and text following Table 17.14.270 clarify the development standards as necessary.

#### Table 17.14.270

Maximum Permitted Density	
Within Subdivision – dwelling units (du) per acre (ac)	Per the underlying zone
R-3 and R-4	(a)
NMU-24	16-24
Subdivided Lot – dwelling units (du) per lot	1
Minimum Lot Area – square feet (sf)	n/a
Minimum Lot Frontage – feet (ft)	25
Minimum Lot Depth – feet (ft)	50
Perimeter Setbacks – feet (ft)	
Front	(b)
Side	(c)
Rear	(d)
Interior Setbacks – feet (ft)	(e)
Maximum Height – feet (ft) or stories, whichever is less	
R-3 and R-4	35' or 3 stories
NMU-24	45' or 3 stories
Maximum Lot Coverage	75% of an approved small lot (f)
Minimum Private Open Space – square feet (sf) per dwelling unit (du)	150

#### SMALL LOT SUBDIVISION DEVELOPMENT STANDARDS

Notes:

- (a) The permitted density range shall be as indicated on the General Plan Land Use Policy Map. Typically, 6-15 du/ac for R-3 and 16-24 du/ac for R-4.
- (b) The provisions of the front yard of the underlying zone shall apply to the front lot line of the perimeter of the subdivision.
- (c) A minimum five-foot yard shall be required along the side lot line of the perimeter of the subdivision, except that corner and reverse corner lots along the perimeter of the subdivision shall have a minimum ten-foot street side yard.

- (d) A minimum ten-foot yard shall be required along the rear lot line of the perimeter of the subdivision, except that where the rear lot line abuts an alley, a minimum five-foot rear yard shall be required along the perimeter of the subdivision.
- (e) No front, side, or rear yard shall be required between interior lot lines created within an approved small lot subdivision.
- (f) Unless the tract or parcel map provides a usable common open space area equivalent to 25% of the lot area of each lot not meeting this provision, and subject to the requirements of Section 17.14.110(B)(2) of this chapter.

(4) Site Access. Access to a small lot within a small lot subdivision, and to its required parking spaces, shall be provided by way of a public or private street, alley, access easement, or driveway.

(5) Accessory Structures, Garages, and Accessory Dwelling Units. Accessory structures, garages, and accessory dwelling units shall be permitted in small lot subdivisions in accordance with Section 17.14.160 (Accessory Structures, Garages, and Accessory Dwelling Units) of this chapter.

(6) Open Space. Each small lot shall provide no less than a total of 150 square feet of private usable open space, accessible directly from the living area of the unit, in the form of a fenced yard or patio, a deck, or balcony. In order to count toward the open space requirement, a yard area, or uncovered deck or patio shall have a minimum width and length of ten feet, and the minimum dimension of a balcony (both width and depth) shall be seven feet. Parking areas, driveways, and required front setback areas shall not count as private usable open space.

(7) Fences and Walls. Fences and walls shall be permitted in small lot subdivisions in accordance with Section 17.14.180 (Fences and Walls) of this chapter and subject to the following regulations:

a. Within the front yard setback areas along the perimeter of the proposed subdivision, the height shall be limited to three and one-half feet.

b. Within the side and rear yard setback areas along the perimeter of the proposed subdivision, the height shall be limited to six feet, except that where the perimeter abuts a major arterial street or a commercial zoned property the height shall be limited to eight feet.

(8) Parking. Parking requirements and parking design shall comply with the following regulations and Chapter 17.34 (Off-Street Parking and Loading) of this title for small lot subdivisions. Where there is a conflict with Chapter 17.34, the requirements of this section shall apply.

a. The number of off-street parking spaces shall be consistent with the ratios for small lot subdivisions in Table 17.34.060.A of this title.

b. Required parking shall be provided on each lot except that guest parking may be provided in an easily accessible common parking area, or on private streets and alleys associated with the small lot subdivision.

c. Required parking spaces on each lot shall be provided within a garage or a carport. Guest parking may be unenclosed.

d. Tandem parking is permitted only for the required parking spaces on each lot and not for guest parking in common parking areas.

(9) Landscaping. Landscaping shall be provided as required by Chapter 16.50 (Landscaping Requirements) of this code.

(10) Stormwater Management. Small lot subdivision developments shall comply with Chapter 7.01 (Water Quality and Stormwater Discharges) of this code and shall require low impact development (LID) practices that result in the infiltration, evapotranspiration, or otherwise natural drainage of stormwater in order to protect water quality.

(11) Trash Enclosures. All small lot subdivision developments shall provide trash (including trash, recycling, and green waste) collection areas adequately and conveniently placed throughout the development. These collection areas shall be screened from view on three sides by a six-foot high masonry wall. A view obscuring gate shall be provided.

(12) Access and Maintenance. An agreement for access and maintenance for all facilities used in common shall be executed to the satisfaction of the City Attorney and shall be recorded in the office of the Orange County Clerk-Recorder prior to the issuance of a certificate of occupancy for the project.

(13) Hazardous Fire Areas and Vegetation Management. Small lot subdivision developments shall be subject to the requirements of the Orange City Fire Department, including the fuel modification requirements outlined in the "Vegetation Management Guideline— Technical Design for New Construction Fuel Modification Plans and Maintenance Program."

#### 17.14.275 – Small Lot Subdivision Guidelines.

Small lot subdivision development shall conform to the City of Orange small lot subdivision guidelines adopted by resolution of the City Council and available at the Community Development Department.

#### SECTION VI:

The definition of HOUSING DEVELOPMENT in Section 17.15.020 of the Orange Municipal Code, "Zoning – Density Bonus – Definitions," is hereby amended in its entirety to read as follows:

HOUSING DEVELOPMENT -(1) one or more groups of projects of five or more residential units constructed in a planned development; (2) a subdivision, including a small lot subdivision, or common interest development approved by the City and consisting of five or more residential units or unimproved residential lots; and (3) either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would be a net increase in available residential units of five or more.

### **SECTION VII:**

Section 17.19.250, "Zoning – Mixed Use Districts – Small Lot Subdivisions," is hereby added to the Orange Municipal code to read as follows:

#### 17.19.250 – Small Lot Subdivisions.

Small lot subdivision development in the NMU-24 zoning district shall conform to the regulations for small lot subdivisions contained in Section 17.14.270 (Small Lot Subdivision Development Standards) of this title.

#### **SECTION VIII:**

Section 17.34.060.D, "Zoning – Off-Street Parking and Loading – Required Number of Parking Spaces," is hereby amended in its entirety to read as follows:

D. Tandem parking, mechanical lifts, or other similar parking solutions may be allowed in multifamily residential developments and in small lot subdivisions in cases where tandem or vertical parking spaces are assigned to the same unit and meet required findings for site plan review. Tandem parking, mechanical lifts, or other similar parking solutions may be approved through a Minor Site Plan Review process described in Section 17.10.060.D of this title. Mechanical lifts and other similar equipment shall be user-friendly, maintained in good operating condition, and enclosed within a structure that is visually compatible with the primary structure(s) on the site.

#### **SECTION IX:**

The following use is hereby added to Table 17.34.060.A, "Required Number of Parking Spaces for Residential Uses," to read as follows:

#### Table 17.34.060.A

#### **REQUIRED NUMBER OF PARKING SPACES FOR RESIDENTIAL USES**

USE	REQUIRED NUMBER OF SPACES
Small Lot	2 parking spaces per unit, either enclosed or covered (i.e. garage or
Subdivision	carport). For units with 4 or more bedrooms, 1 additional space shall be
	provided on the lot, which may be enclosed or unenclosed. Enclosed or
	covered parking may be provided in a tandem format.

A minimum of 0.25 spaces per unit (with a minimum of 2 guest spaces)
shall be provided as easily accessible and distinguishable guest parking
in addition to the required parking for each unit. Guest parking may be
unenclosed.

### SECTION X:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

#### SECTION XI:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Mark A. Murphy, Mayor, City of Orange

**ATTEST:** 

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA)COUNTY OF ORANGE)CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2021, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange

#### **ORDINANCE NO. 15-21**

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING TITLE 16 AND TITLE 17 OF THE ORANGE MUNICIPAL CODE RELATING TO REGULATING SMALL LOT SUBDIVISIONS.

#### **SECTION I:**

Section 16.04.060 of the Orange Municipal Code, "Subdivisions – General Provisions – Advisory Agencies," is hereby amended in its entirety to read as follows:

#### 16.04.060 - Advisory Agencies.

Advisory agencies are charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property and the imposing of requirements or conditions thereon. The Community Development Director and the City Planning Commission are is designated as the advisory agency as that term is used in the Subdivision Map Act and in this title. Subject to the provisions and according to the procedures of this title, such agency shall make reports and recommendations to the City Council Planning Commission on all tentative and final tract maps.

#### **SECTION II:**

Section 16.12.010 of the Orange Municipal Code, "Subdivisions – Procedure – Tentative Tract Map," is hereby amended in its entirety to read as follows:

#### 16.12.010 – Tentative Tract Map.

A. A tentative tract map, accompanied by any forms and fees required, shall be submitted to the Community Development Director for review. The Community Development Director shall refer the map to a staff review committee as designated by the City Manager for review and comment.

B. After the tentative tract map is reviewed by staff, the Community Development Director shall forward the map to the City Planning Commission with his/her comments and/or recommendations. Within fifty (50) days of the submittal of the tentative tract map to the Community Development Director, the City Planning Commission shall have reviewed the tentative tract map and made its recommendations shall approve, conditionally approve, or disapprove the tentative tract map.

C. After the tentative tract map is reviewed by the City Planning Commission, the map shall then be forwarded to the City Council together with any comments and/or recommendations.

The City Council shall then review the tentative tract map and shall have the power to approve, conditionally approve, or disapprove the tentative tract map.

**D-C.** If the map is not approved by the City <u>Council Planning Commission</u>, the subdivider will be notified and given the opportunity to correct the map.

E. With respect to a tentative tract map, the subdivider may appeal from any action of the Community Development Director to the City Planning Commission and taken to the City Council pursuant to the procedure set forth in the Subdivision Map Act.

D. The subdivider may appeal to the City Council from any action taken by the City Planning Commission pursuant to the procedure set forth in the Subdivision Map Act.

**F** <u>E</u>. Any interested person adversely affected by a decision of the Planning Commission may file a complaint with the City Council concerning any such decision. Processing of the complaint shall comply with the Subdivision Map Act.

**G** <u>F.</u> If the map is approved by the City <u>Council Planning Commission</u>, or by the City <u>Council on appeal</u>, a final tract map, substantially in conformance with the tentative tract map, must be recorded within eighteen (18) months.

### **SECTION III:**

Section 17.14.270, "Zoning – Residential Districts – Small Lot Subdivision Development Standards," Table 17.14.270, "Small Lot Subdivision Development Standards," and Section 17.14.275, "Zoning – Residential Districts – Small Lot Subdivision Guidelines," are hereby added to the Orange Municipal Code to read as follows:

#### <u>17.14.270 – Small Lot Subdivision Development Standards.</u>

A. The purpose of this section is to provide supplemental development standards allowing alternative housing typologies in small lot subdivisions within multiple-family residential zones and specific mixed use zones. A subdivision for the purpose of small lots enables construction of new small lot homes and provides a space-efficient and economical alternative to traditional single dwelling unit and multiple dwelling unit development. It also provides pedestrian-friendly developments that are compatible with the existing neighborhood character and context.

B. A small lot subdivision shall be permitted in the R-3, R-4, and NMU-24 zoning districts pursuant to an approved tract or parcel map.

C. The following supplemental regulations shall apply to small lot subdivisions:

(1) A tract map or parcel map pursuant to Chapter 16.08 (Maps) of this code shall be required for the creation of a small lot subdivision.

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(2) The Design Review Committee shall review small lot subdivision projects prior to issuance of any demolition, grading, or building permit and make a finding that the small lot subdivision project complies with the small lot subdivision guidelines in Section 17.14.275 of this chapter. The application for design review shall be filed concurrent with the tract or parcel map application.

(3) A small lot subdivision development shall comply with the regulations in Table 17.14.270 and the supplemental regulations in this section. The footnotes and text following Table 17.14.270 clarify the development standards as necessary.

### Table 17.14.270

#### SMALL LOT SUBDIVISION DEVELOPMENT STANDARDS

Maximum Permitted Density		
<u>Within Subdivision – dwelling units (du) per acre (ac)</u>	Per the underlying zone	
<u>R-3 and R-4</u>	<u>(a)</u>	
<u>NMU-24</u>	<u>16-24</u>	
<u>Subdivided Lot – dwelling units (du) per lot</u>	<u>1</u>	
<u>Minimum Lot Area – square feet (sf)</u>	<u>n/a</u>	
<u>Minimum Lot Frontage – feet (ft)</u>	<u>25</u>	
<u>Minimum Lot Depth – feet (ft)</u>	<u>50</u>	
Perimeter Setbacks – feet (ft)		
Front	<u>(b)</u>	
Side	<u>(c)</u>	
Rear	<u>(d)</u>	
<u>Interior Setbacks – feet (ft)</u>	<u>(e)</u>	
Maximum Height – feet (ft) or stories, whichever is less		
<u>R-3 and R-4</u>	35' or 3 stories	
<u>NMU-24</u>	45' or 3 stories	
Maximum Lot Coverage	<u>75% of an approved</u> <u>small lot (f)</u>	
<u>Minimum Private Open Space – square feet (sf) per dwelling unit</u> (du)	<u>150</u>	

Notes:

(a) <u>The permitted density range shall be as indicated on the General Plan Land Use Policy</u> <u>Map. Typically, 6-15 du/ac for R-3 and 16-24 du/ac for R-4.</u>

- (b) <u>The provisions of the front yard of the underlying zone shall apply to the front lot line of the perimeter of the subdivision.</u>
- (c) <u>A minimum five-foot yard shall be required along the side lot line of the perimeter of the subdivision, except that corner and reverse corner lots along the perimeter of the subdivision shall have a minimum ten-foot street side yard.</u>
- (d) <u>A minimum ten-foot yard shall be required along the rear lot line of the perimeter of the subdivision, except that where the rear lot line abuts an alley, a minimum five-foot rear yard shall be required along the perimeter of the subdivision.</u>
- (e) <u>No front, side, or rear yard shall be required between interior lot lines created within an approved small lot subdivision.</u>
- (f) <u>Unless the tract or parcel map provides a usable common open space area equivalent to</u> 25% of the lot area of each lot not meeting this provision, and subject to the requirements of Section 17.14.110(B)(2) of this chapter.

(4) Site Access. Access to a small lot within a small lot subdivision, and to its required parking spaces, shall be provided by way of a public or private street, alley, access easement, or driveway.

(5) Accessory Structures, Garages, and Accessory Dwelling Units. Accessory structures, garages, and accessory dwelling units shall be permitted in small lot subdivisions in accordance with Section 17.14.160 (Accessory Structures, Garages, and Accessory Dwelling Units) of this chapter.

(6) Open Space. Each small lot shall provide no less than a total of 150 square feet of private usable open space, accessible directly from the living area of the unit, in the form of a fenced yard or patio, a deck, or balcony. In order to count toward the open space requirement, a yard area, or uncovered deck or patio shall have a minimum width and length of ten feet, and the minimum dimension of a balcony (both width and depth) shall be seven feet. Parking areas, driveways, and required front setback areas shall not count as private usable open space.

(7) Fences and Walls. Fences and walls shall be permitted in small lot subdivisions in accordance with Section 17.14.180 (Fences and Walls) of this chapter and subject to the following regulations:

a. Within the front yard setback areas along the perimeter of the proposed subdivision, the height shall be limited to three and one-half feet.

b. Within the side and rear yard setback areas along the perimeter of the proposed subdivision, the height shall be limited to six feet, except that where the perimeter abuts a major arterial street or a commercial zoned property the height shall be limited to eight feet.

(8) Parking. Parking requirements and parking design shall comply with the following regulations and Chapter 17.34 (Off-Street Parking and Loading) of this title for small lot subdivisions. Where there is a conflict with Chapter 17.34, the requirements of this section shall apply.

a. The number of off-street parking spaces shall be consistent with the ratios for small lot subdivisions in Table 17.34.060.A of this title.

b. Required parking shall be provided on each lot except that guest parking may be provided in an easily accessible common parking area, or on private streets and alleys associated with the small lot subdivision.

c. Required parking spaces on each lot shall be provided within a garage or a carport. Guest parking may be unenclosed.

d. Tandem parking is permitted only for the required parking spaces on each lot and not for guest parking in common parking areas.

(9) Landscaping. Landscaping shall be provided as required by Chapter 16.50 (Landscaping Requirements) of this code.

(10) Stormwater Management. Small lot subdivision developments shall comply with Chapter 7.01 (Water Quality and Stormwater Discharges) of this code and shall require low impact development (LID) practices that result in the infiltration, evapotranspiration, or otherwise natural drainage of stormwater in order to protect water quality.

(11) Trash Enclosures. All small lot subdivision developments shall provide trash (including trash, recycling, and green waste) collection areas adequately and conveniently placed throughout the development. These collection areas shall be screened from view on three sides by a six-foot high masonry wall. A view obscuring gate shall be provided.

(12) Access and Maintenance. An agreement for access and maintenance for all facilities used in common shall be executed to the satisfaction of the City Attorney and shall be recorded in the office of the Orange County Clerk-Recorder prior to the issuance of a certificate of occupancy for the project.

(13) Hazardous Fire Areas and Vegetation Management. Small lot subdivision developments shall be subject to the requirements of the Orange City Fire Department, including the fuel modification requirements outlined in the "Vegetation Management Guideline— Technical Design for New Construction Fuel Modification Plans and Maintenance Program."

## <u> 17.14.275 – Small Lot Subdivision Guidelines.</u>

Small lot subdivision development shall conform to the City of Orange small lot subdivision guidelines adopted by resolution of the City Council and available at the Community Development Department.

#### **SECTION III:**

Title 17, Chapter 17.15, Section 17.15.020 is hereby amended to read as follows:

#### **17.15.020** – **Definitions.**

HOUSING DEVELOPMENT -(1) one or more groups of projects of five or more residential units constructed in a planned development; (2) a subdivision, including a small lot subdivision, or common interest development approved by the City and consisting of five or more residential units or unimproved residential lots; and (3) either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would be a net increase in available residential units of five or more.

#### **SECTION V:**

Section 17.19.250, "Zoning – Mixed Use Districts – Small Lot Subdivisions," is hereby added to the Orange Municipal code to read as follows:

#### **17.19.250 – Small Lot Subdivisions.**

Small lot subdivision development in the NMU-24 zoning district shall conform to the regulations for small lot subdivisions contained in Section 17.14.270 (Small Lot Subdivision Development Standards) of this title.

#### **SECTION VI:**

Section 17.34.060.D, "Zoning – Off-Street Parking and Loading – Required Number of Parking Spaces," is hereby amended in its entirety to read as follows:

D. Tandem parking, mechanical lifts, or other similar parking solutions may be allowed in multifamily residential developments and in small lot subdivisions in cases where tandem or vertical parking spaces are assigned to the same unit and meet required findings for site plan review. Tandem parking, mechanical lifts, or other similar parking solutions may be approved through a Minor Site Plan Review process described in Section 17.10.060.D of this title. Mechanical lifts and other similar equipment shall be user-friendly, maintained in good operating condition, and enclosed within a structure that is visually compatible with the primary structure(s) on the site.

#### **SECTION VII:**

The following use is hereby added to Table 17.34.060.A, "Required Number of Parking Spaces for Residential Uses," to read as follows:

## Table 17.34.060.A

# **REQUIRED NUMBER OF PARKING SPACES FOR RESIDENTIAL USES**

USE	REQUIRED NUMBER OF SPACES
<u>Small Lot</u> <u>Subdivision</u>	<ul> <li>2 parking spaces per unit, either enclosed or covered (i.e. garage or carport). For units with 4 or more bedrooms, 1 additional space shall be provided on the lot, which may be enclosed or unenclosed. Enclosed or covered parking may be provided in a tandem format.</li> <li>A minimum of 0.25 spaces per unit (with a minimum of 2 guest spaces) shall be provided as easily accessible and distinguishable guest parking in addition to the required parking for each unit. Guest parking may be unenclosed.</li> </ul>

#### **RESOLUTION NO. 11354**

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE APPROVING SMALL LOT SUBDIVISION GUIDELINES

WHEREAS, small lot subdivision development provides an alternative housing type to larger scale condominiums and apartments in multi-family residential zones and some mixed use zones, and is particularly well-suited in transitional areas between established neighborhoods developed with single-family homes and other more intensive residential or commercial uses; and

WHEREAS, the Small Lot Subdivision Guidelines have been prepared as a companion document to the Small Lot Subdivision Ordinance to articulate City expectations for site layout, building scale, unit orientation, building height, privacy and contextual compatibility for infill residential development with surrounding established neighborhoods; and

WHEREAS, the Small Lot Subdivision Guidelines are intended to uphold the goals of introducing new dwellings and a new housing typology that maintains and responds to the existing urban form, achieves high quality urban design, and promotes walkability through infill development; and

**WHEREAS,** the Planning Commission considered the proposed Small Lot Subdivision Guidelines at a duly advertised public hearing on July 19, 2021, and voted 4-0 to recommend that the City Council approve the Guidelines; and

**WHEREAS,** the City Council considered the proposed Small Lot Subdivision Guidelines at a duly advertised meeting held on September 14, 2021.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council approves the Small Lot Subdivision Guidelines, shown as Attachment 1, attached hereto, based on the following:

#### **SECTION 1 – FINDING**

The Small Lot Subdivision Guidelines are consistent with the goals and policies stated in the City's General Plan Land Use, Housing, and Urban Design Elements by supporting diverse residential environments, contextually compatible infill residential development, and integration of new development with the established urban form.

#### **SECTION 2 - ENVIRONMENTAL REVIEW**

• The proposed Small Lot Subdivision Guidelines are exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15060(c)(2) and 15060(c)(3), because the guidelines provide guidance for site planning and building design for infill residential development sites. The guidelines provide parameters for neighborhood compatibility, privacy, and internal cohesiveness of small lot subdivisions. The guidelines will not cause changes to the residential density established

in the General Plan for the multi-family and Neighborhood Mixed Use land use districts. They do not involve a specific site or development project, and do not otherwise result in a physical change that could cause an impact to the environment. Approval of the Small Lot Subdivision Guidelines is therefore not a "project" as defined in CEQA Guideline 15378.

- The proposed Small Lot Subdivision Guidelines are exempt from CEQA per CEQA Guideline 15061(b)(3) because it can be seen with certainty, after review and evaluation of the facts regarding the Small Lot Subdivision Guidelines, that there is substantial evidence that approval of the guidelines would not have a significant effect on the environment and the common sense exemption applies.
- In the unlikely event approval of the Small Lot Subdivision Guidelines would constitute a project under CEQA, it is categorically exempt from the provisions of CEQA per CEQA Guideline 15321(a) (Class 21, Enforcement Actions by Regulatory Agencies) because said approval is an action taken by the City as a regulatory agency and involves "enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency."

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA ) COUNTY OF ORANGE ) CITY OF ORANGE )

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Resolution was duly and regularly adopted by the City Council of the City of Orange at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

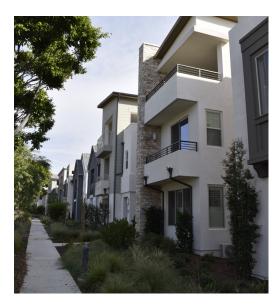
Pamela Coleman, City Clerk, City of Orange

# **CITY OF ORANGE** SMALL LOT SUBDIVISION GUIDELINES





**JULY 2021** 



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# INTRODUCTION

The City of Orange has a distinct community identity and a strong sense of place, attributable to the community's efforts to preserve significant physical features, such as buildings, parks, and landscapes, that communicate the City's cultural, historical, and architectural past. Yet Orange is also a forward-thinking city that looks to adapt and innovate with respect to land development, while ensuring the preservation of its community character.

In 2019, the City was awarded a SB 2 Planning Grant by the California Department of Housing and Community Development (HCD) for the preparation of a small lot subdivision ordinance to accommodate non-traditional residential development, specifically on smaller infill sites. In concert with these guidelines, the ordinance is intended to streamline the design review and entitlement process for small lot subdivision development to create efficiencies for housing production in the City by reducing the time, uncertainty, and complexity of approval and permitting for such projects.

The small lot subdivision ordinance allows for the development of smaller fee simple, single-family residential lots in the multi-family residential zones (R-3 and R-4) and in the NMU-24 mixed use zone. The singlefamily residential lots created through the ordinance are less than the typical minimum area of a standard single-family lot (e.g., 5,000 sf. and minimum lot width of 50 ft. for an R1-5 lot). The ordinance amended Title 17 (Zoning) of the Orange Municipal Code (OMC) to establish new development standards for small lot subdivisions. These new development standards include regulations for lot frontage, setbacks, height, private open space, and parking. Furthermore, under the ordinance, small lot subdivision development is subject to final approval by either the Community Development Director or the Planning Commission.

Small lot subdivisions provide a space-efficient and economical alternative to traditional options for homeownership in the City of Orange. They reduce the amount of land required for new single-family residences, which potentially creates opportunities for more affordable homeownership through lower land costs. In addition, small lot subdivisions allow a greater variety in lot sizes and flexibility in lot configuration, which promote urban infill, a diversity of housing types, and neighborhood stability.



These potential benefits can come with development complexities. Small lot design and layout require unique considerations with respect to small lot sizes and irregular lot configurations, parking and vehicle access, adequate access to air and light, and outdoor space and privacy. In addition, a small lot subdivision's relationship with surrounding existing developments in an established neighborhood and public areas, such as streets and sidewalks, also plays a critical role in shaping its design and layout. The purpose of this document is to address these spatial complexities and ensure neighborhood compatibility through design guidelines. These guidelines are intended to be used to support the implementation of the small lot subdivision ordinance.

# PURPOSE, GOALS, AND APPLICABILITY

## Purpose of the Guidelines

These guidelines are intended to convey to property owners and developers the fundamental expectations the City has for the development of small lot subdivisions. This document offers guidance to promote context-sensitive small lot subdivision development.

## Goals

These guidelines provide direction for the design of a small lot subdivision project. They illustrate options, solutions, and techniques to achieve high-quality design in new small lot subdivision development. The guidelines aim to accomplish the following goals:

- » Ensure that new small lot subdivisions fit into the existing neighborhood context.
- » Introduce new dwellings and a new housing typology that maintains and responds to the existing urban form.
- » Promote walkable urbanism through infill development.
- » Achieve high-quality new urban design.

## Applicability

These guidelines shall apply to all small lot subdivision development that is subject to design review as outlined in OMC Section 17.14.270.

Small lot subdivision development located within the boundaries of a historic district is also subject to compliance with the relevant historic preservation design standards. Where these guidelines conflict or overlap with the historic preservation design standards, the historic preservation standards shall prevail. Likewise, small lot subdivision development located within the Single Story Overlay District is also subject to the development standards of the overlay, and therefore the height of all buildings within the Single Story Overlay District shall be limited to one story or 20 feet, whichever is less.

# **RELATIONSHIP TO GENERAL PLAN**

The General Plan provides the blueprint for long-term development in the City of Orange. It identifies a number of goals and policies related to housing production, preserving community character, and encouraging and accommodating new development. Included in the Land Use Element of the General Plan are the following policies:

- » Policy 1.3: Provide a range of housing densities and types to meet the diverse needs and lifestyles of residents.
- » Policy 1.6: Minimize effects of new development on the privacy and character of surrounding neighborhoods.
- » Policy 6.1: Ensure that new development is compatible with the style and design of established structures and the surrounding environment.

In addition, a specific Housing Element policy supports small lot subdivision development:

» Policy Action 7: Facilitate Infill Construction

The Small Lot Subdivision Guidelines are consistent with and further the General Plan goals and objectives.

# PROCESS

Any small lot subdivision development involving four or fewer lots and to which the parcel map provisions of the Subdivision Map Act and City of Orange Subdivision Ordinance apply, is subject to review and approval by the City's Design Review Committee (DRC) and the Community Development Director prior to the issuance of building permits.

For small lot subdivisions involving five or more lots, the tract map provisions of the Subdivision Map Act and City of Orange Subdivision Ordinance apply. In this case, the project requires approval by the DRC and the Planning Commission.

Furthermore, some small lot subdivision projects may also require approval by the Planning Commission if they involve the need for a variance, conditional use permit, or major site plan review in accordance with Chapter 17.10 of the Orange Municipal Code (OMC). City staff will work with applicants to determine the appropriate approval process for your project. The review process is initiated through the filing of a Land Use Application with the Planning Division of the Community Development Department. Application materials and submittal requirements can be obtained from City staff or by visiting the Planning Division webpage at: https://www.cityoforange.org/287/ Planning-Division.

# **DESIGN GUIDELINES**

# A. Neighborhood Context

The successful fit of a new small lot subdivision project into an existing context depends on how well it relates to neighboring buildings and with the public realm, such as the street and the sidewalk. New small lot development needs to occur through compatible massing and thoughtful design. When considering neighborhood compatibility, the focus should be on basic patterns, which are defined by recurring characteristics such as building scale and massing in the vicinity, and the streetscapes in the neighborhood.

## 1. Scale and Massing

Buildings within a small lot subdivision should respect adjacent buildings by responding to their scale, massing, and need for light, natural ventilation, and views. Small lot subdivision development should follow the established size, shape, and form of the surrounding neighborhood through the use of similar proportions and details.

a. Design small lot homes to be similar in scale and to have similar forms and shapes to nearby and surrounding buildings to avoid the appearance of being



**Figure 1:** Small lot subdivision development should follow the established size, shape, and form of the surrounding neighborhood through the use of similar proportions and details. In this example, the house in color is disproportionate in scale compared to the surrounding houses.



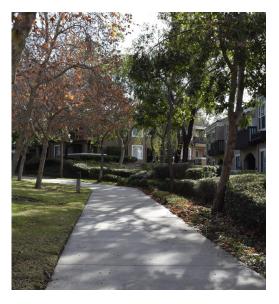
overwhelming or disproportionate in comparison and to maintain existing massing patterns.

- b. Where the scale of proposed small lot homes exceeds that of the immediately surrounding lots, use transitional design elements, such as architectural elements and features, stepping back upper floors, varied forms or articulated massing, or vertical and horizontal projections to provide a human scale and visual relief.
- c. Provide variation in building massing and placement to create contrast in the façades and to allow for more articulated building design.
- d. Small lot homes shall be unique in design so that there is variety between the dwellings within a subdivision. Variations in building design may include changes in building orientation, primary entryways, façade articulation, doors and windows, varied roofline, etc.

### 2. Access and Connectivity

An important determinant of whether a small lot subdivision development fits into the existing context is how it connects to the public realm and completes the streetscape. The character of the public realm is compromised when parking, driveways, and garages dominate the streetscape and undermine the aesthetic quality and walkability of the street. Access to a small lot subdivision should be designed to reinforce the residential and pedestrian-friendly character of the street.

- a. Coordinate the placement of curb cuts to minimize the width and frequency of curb cuts, to maximize the number and size of on-street parking spaces available, and to promote continuity of the sidewalk.
- b. When an alley is present, utilize the alley for vehicular access.
- c. Provide pedestrian pathways from the public street (or right-of-way) to all primary entryways and common areas, such as common open space areas, guest parking, mailboxes, and centralized trash enclosures. Pathways shall be a minimum width of 3 feet.
- d. Provide pedestrian pathways separate from the driveway whenever possible. When the driveway provides pedestrian access to individual dwellings, a distinguishable path shall be provided and treated with a change of materials, finishes, pattern, or paving that differentiates the pathway from vehicular traffic.







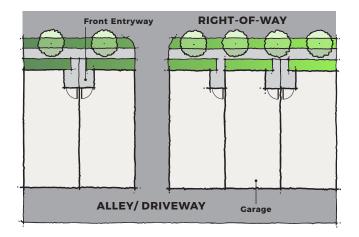
# B. Site Planning

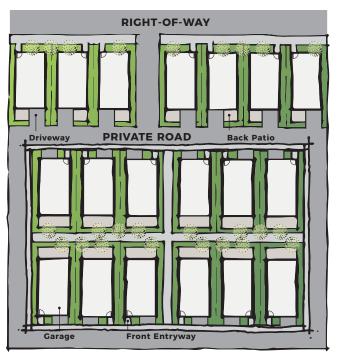
A small lot subdivision's site layout and circulation, the façades and entryways of the dwellings, and the landscaping along the development's perimeter all contribute to the overall quality of the streetscape and to the subdivision's relationship with the street. Yet by its very nature, small lot design is confronted with spatial challenges. A small lot subdivision's topography, geometry, location, and orientation are all factors that must be considered when site planning.

## 1. Building Orientation

Buildings should have a strong relationship to the street they front and should be oriented to positively define and frame adjacent public streets. However, the dimensions of a project site play a critical role in determining the layout of a small lot subdivision.

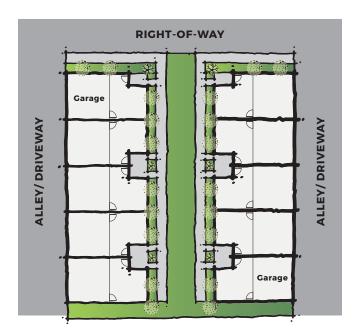
- a. Small lot homes that have street frontage shall be oriented toward and have direct pedestrian access to the public right-of-way. Where there is a physical site constraint, a clearly identifiable entry to the site shall be provided from the right-of-way (Figure 2).
- b. Small lot homes located in the interior of the subdivision shall orient the primary entryway toward and be visible from a pedestrian pathway that is connected to the public right-of-way or private street (Figure 3).
- c. Small lot homes that front an alley shall orient the primary entryway toward the alley, or shall be connected to a pedestrian pathway that leads directly to a public right-of-way (Figure 4 and Figure 5).
- d. Creation of a safe environment should be considered when planning the orientation of buildings in a small lot subdivision. Primary entryways should be easily identifiable and accessible to emergency services, and windows, lighting, and landscaping should be designed and properly placed to allow for maximum visibility and natural surveillance of the site.



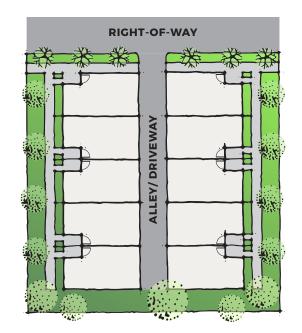


**Figure 2:** Small lot homes that have street frontage shall be oriented toward and have direct pedestrian access to the public right-of-way.

**Figure 3:** Small lot homes located in the interior of the subdivision shall orient the primary entryway toward and be visible from a pedestrian pathway.



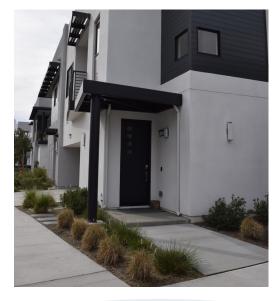
**Figure 4:** Small lot homes that front an alley shall orient the primary entryway toward the alley, or shall be connected to a pedestrian pathway that leads directly to a public right-of-way..



**Figure 5:** Small lot homes shall be connected to a pedestrian pathway that leads directly to a public right-of-way.







## 2. Primary Entryways

Building entrances are an important building feature, providing the connection between the public realm of the street and sidewalk, and the private realm of the dwelling. A well-designed building entrance will appear welcoming and inviting to the pedestrian, making the neighborhood a pleasant place to live. In addition to the doorway itself, the entry may be comprised of stairways, landings, porches, and other elements.

- a. Place the primary entryways of street-fronting small lot homes on the front façades so that the entryways face the street.
- b. Incorporate transitions such as landings, porches, and patios in the articulation of the primary entryways.
- c. Primary entryways shall provide the address or unit identification, and ornamental low-level lighting to illuminate the entry area.
- d. Primary entryways shall be well-articulated in order to enhance the overall quality of the entrance. Elements may include raised landings, recessed doorways, overhangs, side window panels, decorative hardscaping in the landing area, etc.

## 3. Existing Site Features

Unique natural characteristics, such as mature trees and topography, on both the project site and adjacent sites should be respected and taken into account in new building design and subdivision layout.

## 4. Privacy

As with any infill development, some loss of privacy to existing neighboring buildings can be expected with the introduction of a small lot subdivision in an urban setting. To mitigate against any unusual impact on privacy to neighboring interior living spaces, design modifications can be integrated to minimize the impacts

- a. Incorporate landscaping and green screens, where appropriate, between buildings on adjacent properties.
- b. Use solid railings on upper-level balconies and decks.
- c. Arrange window configurations that break the line of sight between houses.
- d. Use translucent glazing such as glass block or frosted glass on windows and doors facing openings on abutting structures.

# C. Building Character

Thoughtful architectural design means that buildings are conceived holistically. Once a small lot subdivision has been fitted into its neighborhood context, and its relationship to the streetscape has been set, the various architectural issues of the small lot homes can be resolved. There are many opportunities in the building design, including the selection of materials, window and door assemblies, colors, finishes, balcony orientation, and landscaping and hardscaping where architects and builders can offer creative solutions to further enhance the overall character of a building and improve the livability within a small lot subdivision.

# 1. Building Articulation

A building's architectural details, openings, and materials provide the finishing touches that convey a sense of quality and define the building's character. Architectural details have a great impact on how a building is perceived, and provide visual interest, texture, and richness. Small lot homes with virtually identical forms can appear dramatically different due to their details. Meanwhile, the use of compatible details visually unifies a small lot subdivision with neighboring buildings, providing continuity and reinforcing the architectural character of an area.

- a. All building façades and exterior building elevations facing a street or the project perimeter shall be treated with an equal level of detail and articulation.
- b. Use a combination of materials, textures, colors, architectural treatments, and details to accentuate variations in building massing and to add visual interest to the building elevations.
- c. Avoid the creation of uninterrupted blank wall surfaces on the building elevations, especially those facing a street or common open space area, by breaking the wall plane a minimum of 6 inches in depth at least every 20 linear feet and employing varied massing and architectural elements.
- d. Strategically place doors, windows, and other openings to create visual interest and provide visibility from the street-fronting small lot homes to the street.
- e. Use porticos, awnings, terraces, balconies, or trellises to provide variations in the building plane.
- f. Apply additional architectural enhancements to the ground floor at the primary entryway, so as to create







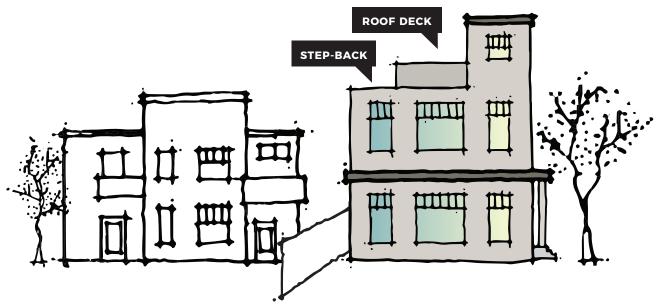


a human scale to the building. Enhancements may include handrails, fixed planters, and ornamental details, such as lighting, molding, or tiles.

# 2. Roof Form

The roof is one of the most distinguishing elements on a building or home, and the collection of roofs in a small lot subdivision or along a streetscape create a "roofline," which is the profile of the buildings against the sky. To design a visually stimulating house, varied roof types may be used together or the same roof type may be utilized in different ways. This creates a home that uniquely responds to both its interior function and its exterior individuality. Small lot home roofs should be well-articulated and should consider the types of rooflines found on surrounding buildings.

- a. Rooflines and roof shapes should be consistent with the design and structure of the building itself as well as with the rooflines found in the surrounding established neighborhood.
- b. Roof forms should reflect the facade articulation and building massing, as opposed to a single-mass roof over an articulated facade.
- c. Roof articulation may incorporate varying roof planes, sloped roofs, open decks, corner balconies, step backs, or any form of roof modulation that adds visual interest and decreases the perceived scale of the residence.

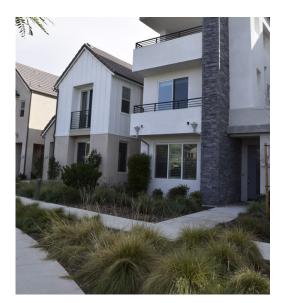


**Figure 6:** All roof decks along the project perimeter and abutting residential uses shall be stepped back a minimum of 5 feet from the roof edge, so that they are oriented away from and screened to prevent direct views of abutting residential neighbors.

# 3. Private Open Space and Roof Decks

Outdoor living spaces can make a small lot home feel more like a traditional single-family residence and provide a number of other benefits toward creating healthy and livable communities. Private open space in a small lot subdivision can be in the form of a fenced yard or patio at ground level, or balconies or decks above ground level. Private open spaces should be designed to be inviting and usable for seating, dining, play equipment, gardening, and other outdoor living activities.

- a. When feasible, locate private usable open space next to primary living areas so that the private usable open space functions as an outdoor extension of the adjacent living room, family room, dining room, or kitchen.
- b. Provide ground level private usable open space that is directly accessible from an indoor living space with a door that opens onto it. Ground level open space should have a minimum width and length of 10 feet.
- c. Provide upper-level private usable open space, such as balconies or decks, that is large enough to accommodate several chairs. Balconies and decks should have a minimum dimension of 7 feet.
- d. Roof decks are a way to maximize access to private outdoor space, light, and air in a small lot subdivision. Roof decks must, however, be designed with the privacy of residential neighbors in mind.
  - i. All roof decks along the project perimeter and abutting residential uses shall be stepped back a minimum of 5 feet from the roof edge, so that they are oriented away from and screened to prevent direct views of abutting residential neighbors. Roof decks facing a right-of-way are not required to be stepped back (Figure 6).
  - ii. Rooftop guardrails, trellises, and other structures should be designed in a manner that is consistent with the architectural language of the rest of the building.
  - iii. Rooftop structures, including guardrails, shall be counted towards building height.









### 4. Landscape and Hardscape

Landscape and hardscape within a small lot development should add to the character of the new buildings, facilitate sustainable water use, and be relatively easy to maintain. The landscape design should be integrated with the small lot homes and enhance the natural environment of the neighborhood.

- a. All setback and open areas not used for buildings, parking areas, driveways, pedestrian pathways, and utilities shall be attractively landscaped and maintained.
- b. All yards abutting the street shall be improved with landscaping (combination of groundcover, shrubs, and trees) and amenities. Amenities may include: decorative fencing, garden walls, pedestrian pathways, uncovered patios, seating areas, and/or decorative bike racks.
- c. Plants adapted to the local climate, soil, and hydrology should be used to reduce the need for irrigation. For suggested plant and tree species, please refer to the City of Orange Landscape Standards and Specifications.
- d. Landscaping should be used to soften walls and fences and provide a green screen, where appropriate, between buildings on adjacent properties.
- e. Walls and fences exposed to public view (e.g., along the street or common open space areas) are subject to the following:
  - i. The form of walls and fences and their materials should be consistent with the architectural style of the homes within the small lot subdivision.
  - ii. Walls and fences should be articulated in a manner that adds architectural interest.
- f. Trash containers should be screened from public view by opaque walls or fences subject to the rest of the recommendations under these guidelines and to OMC Section 17.14.270(I).

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#### **RESOLUTION NO. PC 17-21**

# A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING TITLE 16 AND TITLE 17 OF THE ORANGE MUNICIPAL CODE RELATING TO REGULATING SMALL LOT SUBDIVISIONS

#### **APPLICANT: CITY OF ORANGE**

Moved by Vice-Chair Vazquez and seconded by Commissioner Glasgow that the following resolution be adopted:

WHEREAS, small lot subdivision development provides an alternative housing type to larger scale condominiums and apartments in multi-family residential zones and some mixed use zones, and is particularly well-suited in transitional areas between established neighborhoods developed with single-family homes and other more intensive residential or commercial uses;

**WHEREAS,** this Small Lot Subdivision Ordinance will allow for development of smaller single-family residential lots in the multi-family residential zones (R-3 and R-4) and in the Neighborhood Mixed Use-24 zone (NMU-24), consistent with existing permitted densities;

WHEREAS, this Ordinance will provide a space-efficient and economical alternative to traditional options for homeownership in the City of Orange and potentially create opportunities for affordable homeownership through lower land costs;

WHEREAS, the Planning Commission conducted a duly advertised public hearing on July 19, 2021, at which time interested persons had an opportunity to testify either in support of or in opposition to the proposed Ordinance and recommends approval thereof;

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission recommends that the City Council approve the subject Ordinance Amendment, shown as Attachment 1, attached hereto, based on the following finding:

#### **SECTION 1- FINDING**

Specialized development standards and a streamlined entitlement process for small lot singlefamily subdivisions in multi-family residential and neighborhood mixed use zoning districts are consistent with the goals and policies stated within the City's General Plan Land Use, Housing, and Natural Resources Elements by supporting diverse residential environments, infill residential development, and increasing the inventory of housing in Orange. Accommodation of alternative residential development formats provides options for a variety of household types and household incomes, having the potential to increase the workforce housing inventory in Orange. Resolution No. PC 17-21 Page 2 of 2

### SECTION 2-ENVIRONMENTAL REVIEW

The proposed ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15305 (Class 5 - Minor Alterations in Land Use Limitations) because the ordinance simply provides greater flexibility in site planning and building design and a streamlined entitlement process for infill residential development sites. The ordinance does not cause changes to the residential density established in the General Plan for the multi-family and Neighborhood Mixed Use land use districts. It does not involve a specific site or development project, and does not otherwise result in a physical change that could cause an impact to the environment.

I hereby certify that the Planning Commission of the City of Orange adopts the foregoing resolution on July 19, 2021, by the following vote:

AYES: Simpson, Vazquez, Glasgow, and Martinez NOES: None ABSTAIN: None ABSENT: None

Jule Simpson, Planning Commission Chair

8-2-21

Date

N:\CDD\PLNG\Ordinance Amendments\Small Lot Subdivision (2020)\PC\Attachment 1 Resolution PC 17-21 (including draft Ordinance).docx

#### **ORDINANCE NO. XX-21**

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING TITLE 16 AND TITLE 17 OF THE ORANGE MUNICIPAL CODE RELATING TO REGULATING SMALL LOT SUBDIVISIONS.

WHEREAS, small lot subdivision development provides an alternative housing type to larger scale condominiums and apartments in multi-family residential zones and some mixed use zones, and is particularly well-suited in transitional areas between established neighborhoods developed with single-family homes and other more intensive residential or commercial uses;

**WHEREAS,** this Small Lot Subdivision Ordinance will allow for development of smaller single-family residential lots in the multi-family residential zones (R-3 and R-4) and in the Neighborhood Mixed Use - 24 zone (NMU-24), consistent with existing permitted densities;

**WHEREAS,** this Ordinance will provide a space-efficient and economical alternative to traditional options for homeownership in the City of Orange and potentially create opportunities for affordable homeownership through lower land costs;

WHEREAS, the Planning Commission conducted a duly advertised public hearing on \_\_\_\_\_\_, 2021, at which time interested persons had an opportunity to testify either in support of or in opposition to the proposed Ordinance and recommended its approval to the City Council;

WHEREAS, the City Council conducted a duly advertised public hearing on \_\_\_\_\_\_, 2021, at which time interested persons had an opportunity to testify either in support of or in opposition to the proposed Ordinance; and

**WHEREAS,** the City Council finds that the proposed Ordinance will serve the public health, safety, and welfare of the City.

# NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

### **SECTION I:**

Section 16.04.060 of the Orange Municipal Code, "Subdivisions – General Provisions – Advisory Agencies," is hereby amended in its entirety to read as follows:

#### 16.04.060 – Advisory Agencies.

Advisory agencies are charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property and the imposing of requirements or conditions thereon. The Community Development Director is designated as the advisory agency

as that term is used in the Subdivision Map Act and in this title. Subject to the provisions and according to the procedures of this title, such agency shall make reports and recommendations to the City Planning Commission on all tentative and final tract maps.

# **SECTION II:**

Section 16.12.010 of the Orange Municipal Code, "Subdivisions – Procedure – Tentative Tract Map," is hereby amended in its entirety to read as follows:

# 16.12.010 – Tentative Tract Map.

A. A tentative tract map, accompanied by any forms and fees required, shall be submitted to the Community Development Director for review. The Community Development Director shall refer the map to a staff review committee as designated by the City Manager for review and comment.

B. After the tentative tract map is reviewed by staff, the Community Development Director shall forward the map to the City Planning Commission with his/her comments and/or recommendations. Within fifty (50) days of the submittal of the tentative tract map to the Community Development Director, the City Planning Commission shall review the tentative tract map and shall approve, conditionally approve, or disapprove the tentative tract map.

C. If the map is not approved by the City Planning Commission, the subdivider will be notified and given the opportunity to correct the map.

D. The subdivider may appeal to the City Council from any action taken by the City Planning Commission pursuant to the procedure set forth in the Subdivision Map Act.

E. Any interested person adversely affected by a decision of the Planning Commission may file a complaint with the City Council concerning any such decision. Processing of the complaint shall comply with the Subdivision Map Act.

F. If the map is approved by the City Planning Commission, or by the City Council on appeal, a final tract map, substantially in conformance with the tentative tract map, must be recorded within eighteen (18) months.

# **SECTION III:**

Section 17.14.270, "Zoning – Residential Districts – Small Lot Subdivision Development Standards," Table 17.14.270, "Small Lot Subdivision Development Standards," and Section 17.14.275, "Zoning – Residential Districts – Small Lot Subdivision Guidelines," are hereby added to the Orange Municipal Code to read as follows:

# 17.14.270 – Small Lot Subdivision Development Standards.

A. The purpose of this section is to provide supplemental development standards allowing alternative housing typologies in small lot subdivisions within multiple-family residential zones and specific mixed use zones. A subdivision for the purpose of small lots enables construction of new small lot homes and provides a space-efficient and economical alternative to traditional single dwelling unit and multiple dwelling unit development. It also provides pedestrian-friendly developments that are compatible with the existing neighborhood character and context.

B. A small lot subdivision shall be permitted in the R-3, R-4, and NMU-24 zoning districts pursuant to an approved tract or parcel map.

C. The following supplemental regulations shall apply to small lot subdivisions:

(1) A tract map or parcel map pursuant to Chapter 16.08 (Maps) of this code shall be required for the creation of a small lot subdivision.

(2) The Design Review Committee shall review small lot subdivision projects prior to issuance of any demolition, grading, or building permit and make a finding that the small lot subdivision project complies with the small lot subdivision guidelines in Section 17.14.275 of this chapter. The application for design review shall be filed concurrent with the tract or parcel map application.

(3) A small lot subdivision development shall comply with the regulations in Table 17.14.270 and the supplemental regulations in this section. The footnotes and text following Table 17.14.270 clarify the development standards as necessary.

# Table 17.14.270

# SMALL LOT SUBDIVISION DEVELOPMENT STANDARDS

Maximum Permitted Density	
Within Subdivision – dwelling units (du) per acre (ac)	Per the underlying zone
R-3 and R-4	(a)
NMU-24	16-24
Subdivided Lot – dwelling units (du) per lot	1
Minimum Lot Area – square feet (sf)	n/a
Minimum Lot Frontage – feet (ft)	25
Minimum Lot Depth – feet (ft)	50
Perimeter Setbacks – feet (ft)	
Front	(b)
Side	(c)
Rear	(d)

Interior Setbacks – feet (ft)	(e)
Maximum Height – feet (ft) or stories, whichever is less	
R-3 and R-4	35' or 3 stories
NMU-24	45' or 3 stories
Maximum Lot Coverage	75% of an approved small lot (f)
Minimum Private Open Space – square feet (sf) per dwelling unit (du)	150

Notes:

- (a) The permitted density range shall be as indicated on the General Plan Land Use Policy Map. Typically, 6-15 du/ac for R-3 and 16-24 du/ac for R-4.
- (b) The provisions of the front yard of the underlying zone shall apply to the front lot line of the perimeter of the subdivision.
- (c) A minimum five-foot yard shall be required along the side lot line of the perimeter of the subdivision, except that corner and reverse corner lots along the perimeter of the subdivision shall have a minimum ten-foot street side yard.
- (d) A minimum ten-foot yard shall be required along the rear lot line of the perimeter of the subdivision, except that where the rear lot line abuts an alley, a minimum five-foot rear yard shall be required along the perimeter of the subdivision.
- (e) No front, side, or rear yard shall be required between interior lot lines created within an approved small lot subdivision.
- (f) Unless the tract or parcel map provides a usable common open space area equivalent to 25% of the lot area of each lot not meeting this provision, and subject to the requirements of Section 17.14.110(B)(2) of this chapter.

(4) Site Access. Access to a small lot within a small lot subdivision, and to its required parking spaces, shall be provided by way of a public or private street, alley, access easement, or driveway.

(5) Accessory Structures, Garages, and Accessory Dwelling Units. Accessory structures, garages, and accessory dwelling units shall be permitted in small lot subdivisions in accordance with Section 17.14.160 (Accessory Structures, Garages, and Accessory Dwelling Units) of this chapter.

(6) Open Space. Each small lot shall provide no less than a total of 150 square feet of private usable open space, accessible directly from the living area of the unit, in the form of a fenced yard or patio, a deck, or balcony. In order to count toward the open space requirement, a yard area, or uncovered deck or patio shall have a minimum width and length of ten feet, and the

minimum dimension of a balcony (both width and depth) shall be seven feet. Parking areas, driveways, and required front setback areas shall not count as private usable open space.

(7) Fences and Walls. Fences and walls shall be permitted in small lot subdivisions in accordance with Section 17.14.180 (Fences and Walls) of this chapter and subject to the following regulations:

a. Within the front yard setback areas along the perimeter of the proposed subdivision, the height shall be limited to three and one-half feet.

b. Within the side and rear yard setback areas along the perimeter of the proposed subdivision, the height shall be limited to six feet, except that where the perimeter abuts a major arterial street or a commercial zoned property the height shall be limited to eight feet.

(8) Parking. Parking requirements and parking design shall comply with the following regulations and Chapter 17.34 (Off-Street Parking and Loading) of this title for small lot subdivisions. Where there is a conflict with Chapter 17.34, the requirements of this section shall apply.

a. The number of off-street parking spaces shall be consistent with the ratios for small lot subdivisions in Table 17.34.060.A of this title.

b. Required parking shall be provided on each lot except that guest parking may be provided in an easily accessible common parking area, or on private streets and alleys associated with the small lot subdivision.

c. Required parking spaces on each lot shall be provided within a garage or a carport. Guest parking may be unenclosed.

d. Tandem parking is permitted only for the required parking spaces on each lot and not for guest parking in common parking areas.

(9) Landscaping. Landscaping shall be provided as required by Chapter 16.50 (Landscaping Requirements) of this code.

(10) Stormwater Management. Small lot subdivision developments shall comply with Chapter 7.01 (Water Quality and Stormwater Discharges) of this code and shall require low impact development (LID) practices that result in the infiltration, evapotranspiration, or otherwise natural drainage of stormwater in order to protect water quality.

(11) Trash Enclosures. All small lot subdivision developments shall provide trash (including trash, recycling, and green waste) collection areas adequately and conveniently placed throughout the development. These collection areas shall be screened from view on three sides by a six-foot high masonry wall. A view obscuring gate shall be provided.

(12) Access and Maintenance. An agreement for access and maintenance for all facilities used in common shall be executed to the satisfaction of the City Attorney and shall be recorded in the office of the Orange County Clerk-Recorder prior to the issuance of a certificate of occupancy for the project.

(13) Hazardous Fire Areas and Vegetation Management. Small lot subdivision developments shall be subject to the requirements of the Orange City Fire Department, including the fuel modification requirements outlined in the "Vegetation Management Guideline— Technical Design for New Construction Fuel Modification Plans and Maintenance Program."

#### 17.14.275 - Small Lot Subdivision Guidelines.

Small lot subdivision development shall conform to the City of Orange small lot subdivision guidelines adopted by resolution of the City Council and available at the Community Development Department.

### **SECTION IV:**

The definition of HOUSING DEVELOPMENT in Section 17.15.020 of the Orange Municipal Code, "Zoning – Density Bonus – Definitions," is hereby amended in its entirety to read as follows:

HOUSING DEVELOPMENT -(1) one or more groups of projects of five or more residential units constructed in a planned development; (2) a subdivision, including a small lot subdivision, or common interest development approved by the City and consisting of five or more residential units or unimproved residential lots; and (3) either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would be a net increase in available residential units of five or more.

### **SECTION V:**

Section 17.19.250, "Zoning – Mixed Use Districts – Small Lot Subdivisions," is hereby added to the Orange Municipal code to read as follows:

#### 17.19.250 - Small Lot Subdivisions.

Small lot subdivision development in the NMU-24 zoning district shall conform to the regulations for small lot subdivisions contained in Section 17.14.270 (Small Lot Subdivision Development Standards) of this title.

### **SECTION VI:**

Section 17.34.060.D, "Zoning – Off-Street Parking and Loading – Required Number of Parking Spaces," is hereby amended in its entirety to read as follows:

D. Tandem parking, mechanical lifts, or other similar parking solutions may be allowed in multifamily residential developments and in small lot subdivisions in cases where tandem or vertical parking spaces are assigned to the same unit and meet required findings for site plan review. Tandem parking, mechanical lifts, or other similar parking solutions may be approved through a Minor Site Plan Review process described in Section 17.10.060.D of this title. Mechanical lifts and other similar equipment shall be user-friendly, maintained in good operating condition, and enclosed within a structure that is visually compatible with the primary structure(s) on the site.

### **SECTION VII:**

The following use is hereby added to Table 17.34.060.A, "Required Number of Parking Spaces for Residential Uses," to read as follows:

#### Table 17.34.060.A

#### **REQUIRED NUMBER OF PARKING SPACES FOR RESIDENTIAL USES**

USE	SE REQUIRED NUMBER OF SPACES	
Small Lot Subdivision	<ul> <li>2 parking spaces per unit, either enclosed or covered (i.e. garage or carport). For units with 4 or more bedrooms, 1 additional space shall be provided on the lot, which may be enclosed or unenclosed. Enclosed or covered parking may be provided in a tandem format.</li> <li>A minimum of 0.25 spaces per unit (with a minimum of 2 guest spaces) shall be provided as easily accessible and distinguishable guest parking in addition to the required parking for each unit. Guest parking may be unenclosed.</li> </ul>	

### **SECTION VIII:**

The action proposed herein is not a project subject to CEQA in accordance with CEQA Section 21065 and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3), and 15378. The Ordinance involves general policy and procedure making that would not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Furthermore, the action is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Such is the case with the Ordinance. No new development is proposed and the regulations for small lot subdivisions would generally allow for infill development, which would not result in a significant impact on the environment. Furthermore, any development applications subject to these provisions will be reviewed for CEQA compliance under a separate entitlement. On a case-by-case review of each project, the appropriate environmental document will be prepared to address any project-specific impacts. Therefore, the Ordinance will not have a significant effect on the environment.

### SECTION IX:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

### SECTION X:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Mark A. Murphy, Mayor, City of Orange

**ATTEST:** 

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA)COUNTY OF ORANGE)CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2021, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_\_ day of \_\_\_\_\_\_, 2021 was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange

### **RESOLUTION NO. PC 18-21**

### A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING CITY COUNCIL APPROVAL OF SMALL LOT SUBDIVISION GUIDELINES

### **APPLICANT: CITY OF ORANGE**

Moved by Vice-Chair Vazquez and seconded by Commissioner Martinez that the following resolution be adopted:

WHEREAS, small lot subdivision development provides an alternative housing type to larger scale condominiums and apartments in multi-family residential zones and some mixed use zones, and is particularly well-suited in transitional areas between established neighborhoods developed with single-family homes and other more intensive residential or commercial uses;

WHEREAS, the Small Lot Subdivision Guidelines have been prepared as a companion document to the Small Lot Subdivision Ordinance to articulate City expectations for site layout, building scale, unit orientation, building height, privacy and contextual compatibility for infill residential development with surrounding established neighborhoods;

WHEREAS, the Small Lot Subdivision Guidelines are intended to uphold the goals of introducing new dwellings and a new housing typology that maintains and responds to the existing urban form, achieves high quality urban design, and promotes walkability through infill development;

WHEREAS, the Planning Commission conducted a duly advertised public hearing on July 19, 2021, at which time interested persons had an opportunity to testify either in support of or in opposition to the proposed Small Lot Subdivision Guidelines and recommends approval thereof;

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission recommends that the City Council approve the subject Small Lot Subdivision Guidelines, shown as Attachment 1, attached hereto, based on the following finding:

#### **SECTION 1- FINDING**

The Small Lot Subdivision Guidelines are consistent with the goals and policies stated within the City's General Plan Land Use, Housing, and Urban Design Elements by supporting diverse residential environments, contextually compatible infill residential development, and integration of new development with the established urban form.

# SECTION 2-ENVIRONMENTAL REVIEW

The proposed Small Lot Subdivision Guidelines are categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15305 (Class 5 –

Resolution No. PC 18-21 Page 2 of 2

Minor Alterations in Land Use Limitations) because the guidelines simply provide guidance for site planning and building design for infill residential development sites. The guidelines provide parameters for neighborhood compatibility, privacy, and internal cohesiveness of small lot subdivisions. The guidelines will not cause changes to the residential density established in the General Plan for the multi-family and Neighborhood Mixed Use land use districts. They do not involve a specific site or development project, and do not otherwise result in a physical change that could cause an impact to the environment.

I hereby certify that the Planning Commission of the City of Orange adopts the foregoing resolution on July 19, 2021, by the following vote:

AYES: Simpson, Vazquez, Glasgow, and Martinez NOES: None ABSTAIN: None ABSENT: None

Anve of

Dave Simpson, Planning Commission Chair

8-24-21

Date



# Agenda Item

# Planning Commission

Item #: 7.	2. 7/19/2021	File #: 21-0384
то:	Chair and Members of the Planning Commission	
FROM:	Anna Pehoushek, Assistant Community Development	t Director

# 1. SUBJECT

**Public Hearing:** An ordinance amending Titles 16 and 17 of the Orange Municipal Code to establish development standards and streamlined subdivision and entitlement procedures for small lot subdivisions in multi-family residential zones.

# 2. SUMMARY

The City of Orange has prepared a Small Lot Subdivision Ordinance and associated guidelines to provide more flexible development standards and streamlined procedures for the development of single-family residential housing units on infill sites.

# 3. RECOMMENDED ACTION

Adopt Planning Commission Resolution No. 17-21 entitled:

A Resolution of the Planning Commission of the City of Orange recommending City Council approval of an ordinance of the City Council of the City of Orange amending Titles 16 and 17 of the Orange Municipal Code to establish development standards and streamlined subdivision and entitlement procedures for small lot subdivisions.

Adopt Planning Commission Resolution No. 18-21 entitled:

A Resolution of the Planning Commission of the City of Orange recommending City Council approval of Small Lot Subdivision Guidelines.

# 4. AUTHORIZING GUIDELINES

Orange Municipal Code (OMC) Section 17.10.020 requires City Council approval of amendments to the Zoning Ordinance, but also establishes procedures by which the Planning Commission reviews and makes a recommendation to the City Council on amendments to the Zoning Ordinance.

# 5. PROJECT BACKGROUND

With growing frequency, the Planning Division is receiving inquiries about site redevelopment involving compact arrangements of detached, for sale, single-family housing units. The sites involved in these inquiries are typically properties that have been developed with non-residential uses that have become obsolete. Despite the development conditions, in most cases, the zoning for the sites is multi-family residential. Real estate market forces and geographic location leave them most suitable for residential redevelopment. The desired small lot development format and single-family product type are not easily accommodated by the development standards in the Zoning Ordinance. The purpose of the subject ordinance is to provide development standards to accommodate compact

### Item #: 7.2.

single-family neighborhood formats and to streamline the entitlement process for projects on small parcels.

# Public Outreach

Staff and the City's consultant conducted stakeholder meetings with representatives of the development community who have expressed interest in, or brought forward, similar projects in the community that could have taken advantage of a more streamlined process, and also the broader range of residential developers that are active in the City. Meeting discussions focused on the developer's entitlement process experience in Orange, and the challenges presented by existing zoning standards. Staff also asked them to share their experiences in other cities developing smaller infill sites and what they found to be useful in the way of development standards in those situations. This input and sharing of lessons learned have been an important aspect of informing the ordinance work effort.

The draft Small Lot Subdivision Ordinance and Design Guidelines were crafted to facilitate development, and provide pragmatic and context sensitive standards.

# 6. **PROJECT DESCRIPTION**

The Small Lot Subdivision Ordinance (Attachment 1) amends Title 16 and Title 17 of the Orange Municipal Code and includes the following key features:

- Applies to properties located in Multi-Family Residential zones (R-3 and R-4) and the Neighborhood Mixed Use-24 zone (NMU-24) where the underlying General Plan land use designations are intended to accommodate multi-family residential development.
- Streamlines the entitlement process to authorize Planning Commission approval of tentative tract maps (five or more lots) rather than City Council approval for projects that do not require preparation of an EIR.
- Provides development standards to accommodate small lot homes for infill developments related to:
  - Building setbacks
  - Building height
  - Lot coverage
  - Open space requirements
  - Manner in which parking is provided
  - Wall height

A comparison of existing and proposed development standard highlights include the following:

	Existing Code	Proposed Ordinance
Minimum Lot Area	7,000 sq. ft. Interior 8,000 sq. ft. Corner	n/a

# 7/19/2021

	R-3 Zone: 70 ft. Interior 80 ft. Corner R -4 Zone: 60 ft. Interior 70 ft. Corner	25 ft.
Minimum Lot Depth	R-3 Zone: 100 ft. R-4 Zone: n/a	50 ft.
Minimum Lot Coverage	R-3 Zone: 45% 2-story 55% 1-story R-4 Zone: 60%	n/a
	is less R-4 Zone: 32 ft. or 2 stories,	R-3 Zone: 35 ft. or 3 stories R-4 Zone: 45 ft. or 3 stories NMU-24 45 ft. or 3 stories

Maximum Lot Coverage	imum Lot Coverage	
	R-3 Zone: 45% 2-story 55% 1-st Zone: 60% NMU-24: No limit (up 100%)	
Minimum Open Space Perimeter Setbacks	R-3 Zone: 250 sq. ft./unit <sup>1</sup> R-4 Z 150 sq. ft./unit <sup>1</sup> NMU-24: 150 s ft./unit <sup>1, 2</sup>	150 sq. ft./unit private open space. No common open space required.
Front	R-3 Zone: 15 ft. min. R-4 Zone: min. NMU-24: 10 ft. max.	Applies to the front perimeter lot line of the overall subdivision site, not individual lots within the subdivision R-3 Zone: 15ft. min. R-4 Zone: 10ft. min. NMU-24: 10 ft. max.
Side	R-3 Zone: 5 ft. min. R-4 Zone: min. NMU-24: 0	Applies to the side perimeter lot line of the overall subdivision site, not individual lots within the subdivision 5 ft. min. 10 ft. min. street side yard for corner and reverse corner lots
Rear	R-3 Zone: 10 min. R-4 Zone: 1 NMU-24: 0	Applies to the rear perimeter lot line of the overall subdivision site, not individual lots within the subdivision 10 ft. min. 5 ft. min. where the rear lot line abuts an alley

	1
Interior SetbacksSee	
"Side Setbacks"	
aboveNo front, side, or	
rear yard shall be	
required between interior	
lot lines created within	
an approved small lot	
subdivision	

<sup>1</sup> Each unit shall be provided with at least one area of private usable open space accessible directly from the living area of the unit, in the form of a fenced yard or patio, a deck or balcony. In order to count toward the open space requirement, a yard area, or uncovered deck or patio shall have a minimum width and length of ten feet, and the minimum dimension of a balcony (both width and depth) shall be seven feet. In the R-3 and R-4 districts all such private open space may be counted up to a total of one-third of the required usable open space.

<sup>2</sup> A minimum of fifteen (15) percent of the total floor area of the dwelling units shall be provided as private and/or common open space. Up to twenty-five (25) percent of the total open space requirement may be met by counting any private exterior open space areas (patios and balconies) provided within the project.

The Ordinance does not apply to Single-Family (R-1) or Duplex (R-2) zones because the higher density development typically associated with the small lot development format cannot be accommodated in the lower density R-1 and R-2 zones. Similarly, the Ordinance does not apply to commercial zones because a concentrated single-family neighborhood would not be a contextually appropriate development format along the major commercial corridors of Orange.

# Small Lot Subdivision Design Guidelines

The Small Lot Subdivision Design Guidelines (Attachment 3) are intended to guide the site layout and building design in order to ensure that the new small lot subdivisions are compatible with existing adjacent neighborhoods. Key content that is intended to address contextual compatibility includes:

- Scale and massing
- Building orientation
- Building articulation
- Roof forms
- Stepped upper stories
- Access and connectivity to established neighborhood

# 7. ANALYSIS AND STATEMENT OF THE ISSUES

# Issue 1: Alternative Development Standards

Infill single-family residential development projects that have come before the City in recent years have been subject to the multi-family residential development standards of the Zoning Ordinance dating from the early 1990s that were intended to be applied to walk-up garden style apartment and condominium projects. Therefore, development standards are oriented to large areas of shared common open space, private patio and balcony areas, and specified types of complex amenities (e.g., tot lots, pools, tennis court, clubhouse). Similarly, building setbacks and parking standards are crafted to address a development format where a complex has an internal and insular orientation, and parking is provided in a more communal format.

Consequently, when new infill projects have come to Planning staff with units laid out in a more traditional neighborhood format with individual "single-family" residences oriented to a private street, the code does not provide options for accommodating them. Instead, the only option available to developers is to develop the site as a single-family condominium product, and to prepare of a specific plan with development standards tailored to that product type. Staff and the applicants work together to ensure that specific plan development standards facilitate integration with existing surrounding neighborhoods and other neighborhood-serving services and amenities in the area such as parks, schools, and the existing City sidewalk network.

The development standards contained in the proposed ordinance are intended to eliminate the need

for a specific plan. Specifically, the standards eliminate a minimum lot size, allow options for classification of front, side and rear property lines, allow for a higher percentage of lot coverage than typical multi-family zoning, and differentiate between setbacks for the overall perimeter of the development site and building setbacks for units contained within the development itself.

# Density

While the development standards accommodate a more compact single-family neighborhood format, they do not allow a higher density of units than is already provided for by the underlying Medium Density Residential and Neighborhood Mixed Use General Plan designations (24 dwelling units/acre max.). With the proposed development standards, the density can be arranged for a compatible interface with surrounding development.

# Parking

Parking requirements under the proposed ordinance would be consistent with the number of spaces required in single-family zones; however, flexibility is provided in the form of allowing for tandem parking. Additionally, parking may be provided in either an enclosed garage or carport on the residential lot, as opposed to the City's standard single-family residential parking requirement needing to be entirely met in an enclosed garage. Additionally, the proposed ordinance requires 0.25 spaces of guest parking per unit, whereas guest parking is not required for homes in typical single-family zoning districts in Orange.

# Issue 2: Streamlined Entitlement Process

As noted above, the present entitlement process for small lot development is cumbersome, requiring a Zone Change and preparation of a specific plan to establish alternative development standards, along with an environmental document. This process typically takes 18-24 months and culminates with City Council approval. Examples include the MBK Irving House on Orange Olive Road and adjacent Cohen Residential project on Grove Avenue.

The proposed development standards contained in the ordinance have been crafted to eliminate the need for a specific plan to accommodate small lot subdivisions. Projects that can be designed within the parameters of the new ordinance will typically be exempt from environmental review based on the Infill Development Exemption (Class 32) afforded by the California Environmental Quality Act Guidelines. This exemption applies to projects on sites five acres or less in size that are served by public services and utilities that comply with the General Plan and Zoning Ordinance.

Another area of streamlining resulting from the ordinance is the change in approval body from the City Council to the Planning Commission for projects involving tentative tract maps (subdivision of five or more parcels). Given the nature of development associated with a small lot subdivision, projects would continue to undergo design review and major site plan review in accordance with Chapter 17.10 of the Zoning Ordinance. Planning Commission review and approval of the subdivision maps, concurrently with Major Site Plan and Design Review, will reduce processing time and cost.

# Issue 3: Small Lot Subdivision Guidelines

Small Lot Subdivision Guidelines have been prepared as a companion document to the proposed ordinance to better articulate expectations for site layout, building scale, unit orientation, building heights, privacy, and contextual compatibility. The illustrated guidelines are not intended to be

applied as strict requirements; rather, their stated goals are to:

- Ensure that new small lot subdivisions fit into the existing neighborhood context.
- Introduce new dwellings and a new housing typology that maintains and responds to the existing urban form.
- Promote walkable urbanism through infill development.
- Achieve high quality new urban design.

The guidelines provide a framework for informing site planning and building design, and supporting a neighborhood and housing product type that is appropriate for the Orange community.

# 8. PUBLIC NOTICE

Because of the citywide nature of the ordinance, the City published a one-eighth page notice in the Anaheim Bulleting newspaper on July 8, 2021.

# 9. ENVIRONMENTAL REVIEW

**Categorical Exemption**: The proposed ordinance and guidelines are categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15305 (Class 5 - Minor Alterations in Land Use Limitations) because the ordinance simply provides greater flexibility in site planning and building design and a streamlined entitlement process for infill residential development sites. The guidelines provide parameters for neighborhood compatibility, privacy, and internal cohesiveness of small lot subdivisions. Neither the ordinance nor the guidelines cause changes to the residential density established in the General Plan for the multi-family and Neighborhood Mixed Use land use districts. They do not involve a specific site or development project, and do not otherwise result in a physical change that could cause an impact to the environment.

# **10. ADVISORY BOARD ACTION**

# Staff Review Committee:

The Staff Review Committee provided input on the ordinance and guidelines through a series of inter -departmental meetings with Planning staff and the City's consultant.

# 11. ATTACHMENTS

- Attachment 1 Planning Commission Resolution No. PC 17-21 (including draft Ordinance)
- Attachment 2 Redlined Ordinance
- Attachment 3 Planning Commission Resolution no. PC 17-21 (including draft Small Lot Subdivision Guidelines)

# **MINUTES - FINAL**

# City of Orange

### **Planning Commission**

July 19, 2021

# 1. OPENING

The Planning Commission of the City of Orange, California convened on July 19, 2021 at 7:00 p.m. in a Regular Meeting in the Council Chamber, 300 E. Chapman Avenue, Orange, California.

# 1.1 CALL TO ORDER

Chair Simpson called the meeting to order at 7:00 p.m.

# 1.2 PLEDGE OF ALLEGIANCE

Commissioner Glasgow led the flag salute.

# 1.3 ROLL CALL

**Present:** Simpson, Vazquez, Glasgow, and Martinez **Absent:** None

# 2. PUBLIC COMMENTS

None

# 3. CONSENT CALENDAR

All matters listed under the Consent Calendar are considered to be routine by the Planning Commission and will be enacted by one motion. There will be no separate discussion of said items unless members of the Planning Commission, staff or the public request specific items removed from the Consent Calendar for separate action.

# 3.1. Approval of meeting minutes of the Planning Commission of the City of Orange for the May 17, 2021 and June 7, 2021 Regular Meetings.

Commissioners requested clarification of item 3.1 in the May 17 minutes to indicate conformance of the Capital Improvement Program with the General Plan.

ACTION: Minutes approved as amended.

A motion was made by Commissioner Glasgow, seconded by Commissioner Martinez, to approve the Consent Calendar.

The motion carried by the following vote: **Ayes:** Simpson, Vazquez, Glasgow, and Martinez

Ayes: Simpson, vazquez, Glasgow, and Martinez Noes: None Absent: None

### 4. ASSISTANT COMMUNITY DEVELOPMENT DIRECTOR REPORTS

Staff announced an upcoming public workshop for the North Tustin Street Specific Plan.

### 5. COMMISSION BUSINESS

None

### 6. CONTINUED HEARINGS

None

### 7. NEW HEARINGS

7.1. Public Hearing: An ordinance amending procedures for noticing and posting requirements.

The Commission discussed the following:

- Noticing cost to applicants
- Newspaper readership and published notices
- Staff resources for different methods of notification
- Noticing radius for large projects
- Translation of notices
- Noticing time frames
- Possible expansion of mailing radius
- Size of posted notices

Chair Simpson opened the public hearing.

The following spoke in general favor of this item, but with additional suggestions to the Commission:

- Adrienne Gladson
- Jeff Lawrence

Chair Simpson closed the public hearing.

A motion was made by Commissioner Glasgow, seconded by Commissioner Martinez, to adopt amended Planning Commission Resolution No. 19-21 with added requirement to broaden the noticing range from 300 feet to 400 feet. Resolution No. 19-21 entitled:

A Resolution of the Planning Commission of the City of Orange recommending that the City Council adopt an ordinance amending Title 17 of the Orange Municipal Code (Zoning) to update noticing and posting requirements.

The motion carried by the following vote:

Ayes:Simpson, Vazquez, Glasgow, and MartinezNoes:NoneAbsent:None

# 7.2. Public Hearing: Comprehensive Citywide Parking Code Update and Related Administrative Revisions

The Commission discussed the following:

- · Content of consultant report
- · Stakeholder outreach
- · Implications on historic downtown
- Medical office rates
- · Restaurant parking rates
- · Loading zone dimensions

Chair Simpson opened the public hearing.

The following spoke in opposition to the update:

Adrienne Gladson

Chair Simpson closed the public hearing.

A motion was made by Commissioner Glasgow, seconded by Commissioner Martinez, to adopt Planning Commission Resolution No. PC 16-21 entitled:

A Resolution of the Planning Commission of the City of Orange recommending that the City Council adopt an ordinance amending Title 17 of the Orange Municipal Code (Zoning Code) to add definitions, update code references, and amend Chapter 17.34 relating to off-street parking and loading.

The Motion carried by the following vote:

Ayes:Simpson, Vazquez, Glasgow, and MartinezNoes:NoneAbsent:None

7.3. Public Hearing: An ordinance amending Titles 16 and 17 of the Orange Municipal Code establish development standards and streamlined subdivision and to entitlement procedures for small lot subdivisions in multi-family residential zones.

The Commission discussed the following:

- Experiences of other cities with similar ordinances
- Setbacks and lot coverage
- Approvals and appeal process
- Affected zones
- Opportunity to accommodate housing for families and homeownership

Chair Simpson opened the public hearing.

Perry Banner, Principal Planner of Noble Planning Group, spoke on behalf of the project.

Planning Commission

Chair Simpson closed the public hearing.

A motion was made by Vice Chair Vazquez, seconded by Commissioner Glasgow, to adopt Planning Commission Resolution No. 17-21 entitled:

A Resolution of the Planning Commission of the City of Orange recommending City Council approval of an ordinance of the City Council of the City of Orange amending Titles 16 and 17 of the Orange Municipal Code to establish development standards and streamlined subdivision and entitlement procedures for small lot subdivisions.

The motion carried by the following vote:

Ayes:Simpson, Vazquez, Glasgow, and MartinezNoes:NoneAbsent:None

A motion was made by Vice Chair Vazquez, seconded by Commissioner Martinez, to adopt Planning Commission Resolution No. 18-21 entitled:

A Resolution of the Planning Commission of the City of Orange recommending City Council approval of Small Lot Subdivision Guidelines.

The motion carried by the following vote:Ayes:Simpson, Vazquez, Glasgow, and MartinezNoes:NoneAbsent:None

#### 8. ADJOURNMENT

There being no further business, the meeting adjourned at 8:45 p.m.

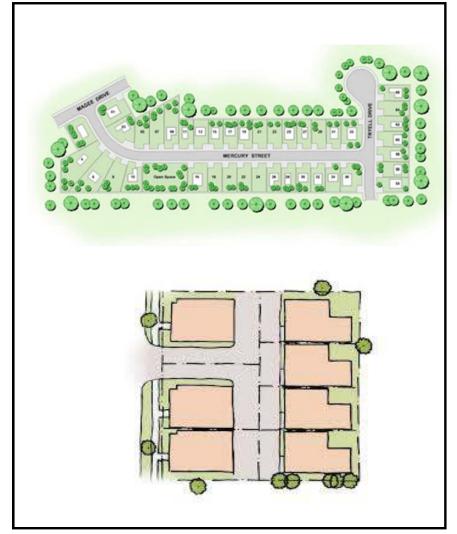
The next Regular Planning Commission Meeting will be held on Monday, August 2, 2021 at 7:00 p.m., in the Council Chamber.

Hirestul lun

Anna Pehoushek Assistant Community Development Director



Traditional Multi-Family Apartment (Buildings Oriented to Interior of Site Surrounded by Parking)



Small Lot Subdivision Multi-Family (Buildings Oriented to Street in Neighborhood Format)