



Tom Kisela  
Interim City Manager

Gary A. Sheatz  
City Attorney

Pamela Coleman  
City Clerk

# AGENDA

## City Council December 13, 2022

### Joint Meeting with the Successor Agency to the Orange Redevelopment Agency

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

City Council Chamber  
300 E. Chapman Avenue  
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

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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](http://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 Council 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](http://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.

## **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](mailto: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](http://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 written comments by 3:00 p.m. the day of the meeting. All written comments will be provided to the Council and posted on the City's website.

## **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.

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. CALL TO ORDER****1.1 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. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(a) & (d)(1) - One case  
Name of Case: Deanna Garcia v. Gutierrez, et al.  
Orange County Superior Court Case No. 30-2020-01125092

**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**

Pastor Tim Klinkenberg, St. John's Lutheran Church of Orange

**1.2 PLEDGE OF ALLEGIANCE**

Mayor Mark A. Murphy

**1.3 ROLL CALL****1.4 PRESENTATIONS/ANNOUNCEMENTS**

Memorial Adjournment in honor of Rudolph "Rudy" Diaz

**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.

**3.2. Confirmation of warrant registers dated November 4, 10, 18, and 23, 2022.****Recommended Action:**

Approve.

**Attachments:**     [Staff Report](#)

**3.3. Approval of amended minutes of the City of Orange City Council Regular Meeting held on July 13, 2021.****Recommended Action:**

Approve minutes as amended.



**Attachments:**     [Staff Report](#)  
[7-13-2021 amended minutes for report out of closed session summary](#)

**3.4. Approval of minutes of the City of Orange City Council Adjourned Regular Meeting held on November 15, 2022.**

**Recommended Action:**

Approve minutes as presented.

**Attachments:**     [Staff Report](#)  
[November 15, 2022, Adjourned Regular Meeting minutes](#)

**3.5. Historic Property Preservation Agreements (Mills Act Contracts) for nine qualified historic properties.**

**Recommended Action:**

Approve nine 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 on behalf of the City.

**Attachments:**     [Staff Report](#)  
[Summary of Nine Mills Act Applications](#)  
[Mills Act Contract MAC 412.0-22 with Photograph](#)  
[Mills Act Contract MAC 419.0-22 with Photograph](#)  
[Mills Act Contract MAC 420.0-22 with Photograph](#)  
[Mills Act Contract MAC 422.0-22 with Photograph](#)  
[Mills Act Contract MAC 423.0-22 with Photograph](#)  
[Mills Act Contract MAC 424.0-22 with Photograph](#)  
[Mills Act Contract MAC 425.0-22 with Photograph](#)  
[Mills Act Contract MAC 426.0-22 with Photograph](#)  
[Mills Act Contract MAC 427.0-22 with Photograph](#)

**3.6. Appropriation of \$530,000 in Comprehensive Transportation Funding Programs - Project X Tier 1 2022 Environmental Cleanup Program fund and Sanitation and Sewer fund for the Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.**

**Recommended Action:**

1. Accept into the City's revenue budget \$400,000 in grant funds from the OCTA Tier 1 Environmental Cleanup Program, into revenue account number 550.5011.45460.30215, Reimbursable Capital Projects - Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.
2. Authorize the appropriation of \$400,000 to expenditure account number 550.5011.56340.30215, Reimbursable Capital Projects - Taft Avenue & Lewis

Street Water Quality Storm Drain Improvement Project.

3. Authorize the appropriation of \$130,000 to expenditure account number 220.5011.56340.30215, Sanitation and Sewer - Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.

**Attachments:**     [Staff Report](#)  
                                 [OCTA ECP Project X Tier 2022 Programming Recommendations](#)

- 3.7. **Appropriation of \$30,000 in designated grant funding received from California State Library.**

**Recommended Action:**

1. Accept into the City's budget \$30,000 in grant funds from California State Library into revenue account number 100.2001.45290.30213, General Fund - Sustainable Orange Grant.
2. Authorize the appropriation of \$30,000 in grant funds into expenditure account number 100.2016.53340.30213, General Fund - Sustainable Orange Grant.

**Attachments:**     [Staff Report](#)  
                                 [Sustainable Orange Grant Award Letter](#)

- 3.8. **Award of Contract to Tess Electric, Inc. for electrical improvements at Wells 23 and 24.**

**Recommended Action:**

Approve the contract with Tess Electric, Inc. in the amount of \$35,532 for electrical improvements at Wells 23 and 24; and authorize the Mayor and City Clerk to execute on behalf of the City.

**Attachments:**     [Staff Report](#)  
                                 [Contract with Tess Electric, Inc.](#)

- 3.9. **Second Reading and adoption of an Ordinance of the City Council of the City of Orange approving a development agreement with Old Town Gateway, LLC for a project on a site located at 401 W. Chapman Avenue and 135 N. Atchison Street. Development Agreement No. 0008-22. Ordinance No. 08-22.**

**Recommended Action:**

Adopt Ordinance No. 08-22.

**Attachments:**     [Staff Report](#)  
                                 [Ordinance No. 08-22](#)

- 3.10. **Second Reading and adoption of an Ordinance of the City Council of the City of Orange creating the Neighborhood Preservation Overlay Zone; providing development standards to regulate the addition of bedrooms or bathrooms to a primary residence within specified boundaries; revising or adding definitions pertaining to residential additions and student housing; and updating provisions**

for reviewing body approval of specified matters. Ordinance No. 10-22.

**Recommended Action:**

Adopt Ordinance No. 10-22.

**Attachments:**     [Staff Report](#)  
                              [Ordinance No. 10-22](#)

- 3.11. Second Reading and adoption of an Ordinance of the City Council of the City of Orange amending various sections of the Orange Municipal Code to delete outdated language, update references to conform with current law and code provisions, and achieve internal consistency. Ordinance No. 09-22.

**Recommended Action:**

Adopt Ordinance No. 09-22.

**Attachments:**     [Staff Report](#)  
                              [ORD-09-22 OMC Administrative Updates](#)

## **SUCCESSOR AGENCY TO THE ORANGE REDEVELOPMENT AGENCY**

- 3.12. Recognized Obligation Payment Schedule for the fiscal period covering July 1, 2023 through June 30, 2024 (ROPS 23-24). Resolution No. SAORA-036.

**Recommended Action:**

1. Adopt Resolution No. SAORA-036. A Resolution of the Governing Board of the Successor Agency to the Orange Redevelopment Agency approving a Recognized Obligation Payment Schedule for the fiscal period covering July 1, 2023, through June 30, 2024 (ROPS 23-24), pursuant to Health and Safety Code Section 34177, and taking certain related actions.
2. Direct staff to transmit ROPS 23-24 and related Administrative Budgets to the Orange Countywide Oversight Board of the Successor Agency to the Orange Redevelopment Agency.

**Attachments:**     [Staff Report](#)  
                              [Resolution No. SAORA-036](#)

## **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(a)(3).

**5.1. Resolution supporting the Iranian-American community. (Tavoularis)****Recommended Action:**

Consider adoption of Resolution No. 11429. A Resolution of the City Council of the City of Orange declaring support of the Iranian-American community and condemning the violence perpetrated by the government of Iran against its people.

**Attachments:**     [Staff Report](#)  
                              [Resolution No. 11429](#)

**6. REPORTS FROM CITY MANAGER****7. RECOGNITION OF OUTGOING COUNCILMEMBER CHIP MONACO****8. RECOGNITION OF OUTGOING MAYOR PRO TEM KIMBERLEE NICHOLS****9. RECOGNITION OF OUTGOING MAYOR MARK A. MURPHY****10. ADJOURNMENT**

The Oath of Office Ceremony will be held at a Special Meeting on Thursday, December 15, 2022, at 6:00 p.m., in the Council Chamber.

The next Regular City Council meeting will be held on Tuesday, January 10, 2023, 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 at 407 E. Chapman Avenue, Police facility at 1107 N. Batavia Street, and uploaded to the City's website [www.cityoforange.org](http://www.cityoforange.org).

Date posted: December 8, 2022



# Agenda Item

## City Council

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**Item #:** 3.1.

12/13/2022

**File #:** 22-0687

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, 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

- None



# Agenda Item

## City Council

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**Item #:** 3.2.

12/13/2022

**File #:** 22-0688

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Katrin Bandhauer, Assistant Finance Director

### 1. SUBJECT

Confirmation of warrant registers dated November 4, 10, 18, and 23, 2022.

### 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

- None



# Agenda Item

## City Council

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**Item #:** 3.2.

12/13/2022

**File #:** 22-0688

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Katrin Bandhauer, Assistant Finance Director

### 1. SUBJECT

Confirmation of warrant registers dated November 4, 10, 18, and 23, 2022.

### 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

- None



# Agenda Item

## City Council

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**Item #:** 3.3.

12/13/2022

**File #:** 22-0714

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Gary Sheatz, City Attorney  
Pamela Coleman, City Clerk

### 1. SUBJECT

Approval of amended minutes of the City of Orange City Council Regular Meeting held on July 13, 2021.

### 2. SUMMARY

Submitted for your consideration and approval are the amended minutes regarding the report out from Closed Session for the City of Orange City Council meeting held on July 13, 2021.

### 3. RECOMMENDED ACTION

Approve minutes as amended.

### 4. ATTACHMENTS

- July 13, 2021, Regular Meeting minutes, as amended.





# Agenda Item

## City Council

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**Item #:** 3.3.

12/13/2022

**File #:** 22-0714

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Gary Sheatz, City Attorney  
Pamela Coleman, City Clerk

### 1. SUBJECT

Approval of amended minutes of the City of Orange City Council Regular Meeting held on July 13, 2021.

### 2. SUMMARY

Submitted for your consideration and approval are the amended minutes regarding the report out from Closed Session for the City of Orange City Council meeting held on July 13, 2021.

### 3. RECOMMENDED ACTION

Approve minutes as amended.

### 4. ATTACHMENTS

- July 13, 2021, Regular Meeting minutes, as amended.

4. **REPORT ON CLOSED SESSION ACTIONS**

In response to the July 9, 2021, letter from attorneys representing Mary's Kitchen, the City Council held a closed-session meeting to discuss the significant threat and exposure to litigation against the City. The item appeared on the closed-session agenda in compliance with the Brown Act, as authorized under § 54956.9(d)(2)-(4).

The City Council was provided privileged advice and discussed the possible legal implications of the letter, which urged the City Council to rescind or stay the termination of the License Agreement by the City Manager. The City Council did not acquiesce to the demands in the letter, thereby having the effect of confirming the actions of the City Manager.



# Agenda Item

## City Council

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**Item #:** 3.4.

12/13/2022

**File #:** 22-0691

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Pamela Coleman, City Clerk

### 1. **SUBJECT**

Approval of minutes of the City of Orange City Council Adjourned Regular Meeting held on November 15, 2022.

### 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**

- November 15, 2022, Adjourned Regular Meeting minutes



# Agenda Item

## City Council

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**Item #:** 3.4.

12/13/2022

**File #:** 22-0691

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Pamela Coleman, City Clerk

### 1. SUBJECT

Approval of minutes of the City of Orange City Council Adjourned Regular Meeting held on November 15, 2022.

### 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

- November 15, 2022, Adjourned Regular Meeting minutes

**MINUTES - DRAFT**

**City of Orange**

**City Council**

November 15, 2022

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

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The City Council of the City of Orange, California convened on November 15, 2022, at 5:00 p.m. in a joint Adjourned Regular Meeting with the Orange Industrial Development Authority in the Council Chamber, 300 E. Chapman Avenue, Orange, California.

**5:00 PM CLOSED SESSION**

**1. CALL TO ORDER**

Mayor Murphy called Closed Session to order at 5:01 p.m.

**1.1 ROLL CALL**

**Present:** Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy

**Absent:** None

Councilmember Gutierrez joined Closed Session at 5:03 p.m.

**2. PUBLIC COMMENTS ON CLOSED SESSION ITEMS**

None

**3. RECESS TO CLOSED SESSION**

The City Council recessed to Closed Session at 5:03 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) - One case

Name of case: Mary's Kitchen, et al. v. City of Orange

United States District Court Case No. 8:21-cv-01483-JVS-KES

**4. CLOSED SESSION REPORT**

None

**5. ADJOURNMENT**

Closed Session was adjourned at 5:35 p.m.

**6:00 PM REGULAR SESSION****1. OPENING/CALL TO ORDER**

Mayor Murphy called the joint meeting to order at 6:00 p.m.

(Note: Hereinafter the titles of Mayor, Mayor pro tem, Councilmember, City Attorney, and City Clerk shall be used to indicate Mayor/Chair, Mayor pro tem/Vice Chair, Councilmember/Authority Member, City/Authority Attorney, City Clerk/Authority Secretary.)

**1.1 INVOCATION**

Given by Rev. Dr. Robb Ring from Immanuel Lutheran Church of Orange.

**1.2 PLEDGE OF ALLEGIANCE**

Led by Mayor pro tem Kimberlee Nichols.

**1.3 ROLL CALL**

**Present:** Nichols, Monaco, Barrios, Dumitru, Tavoularis, Gutierrez, and Murphy

**Absent:** None

**1.4 PRESENTATIONS/ANNOUNCEMENTS**

Orange High School Student Liaison Diego Paz provided Council with a brief update on school happenings.

El Modena High School Student Liaison Ruby Hewitt provided Council with a brief update on school happenings.

Orange Public Library Foundation Presentation to the Orange Public Library.

Mayor pro tem Nichols announced the City's annual Tree Lighting Ceremony and Candlelight Choir Procession will be on December 4, in the Old Towne Orange Plaza.

**2. PUBLIC COMMENTS**Public Speakers

Johanna Speiser encouraged the City to develop a Climate Action Plan.

Carole Walters spoke about the Orange Taxpayers Association.

Katie Montgomery, Library Board of Trustee member, discussed the many library services being offered to teens.

Jake Comer discussed climate change and the implementation of SB1383.

Silvia San Nicolas spoke in opposition of a proposed cemetery near Palmyra Avenue.

Sharon Galasso spoke in opposition of a proposed cemetery near Palmyra Avenue.

Jeff Stoddard requested the City to ban gas powered leaf blowers.

James Kushon provided Council with an update on the Yorba Dog Park.

Fady Abdelmalek spoke in support of increasing the number of short term rental permits issued by the City.

Written Public Comments

Janice Brownfield emailed about the use of microgrids as a sustainable energy solution.

Fred Stoughton emailed thanking the City for current programs and services.

Mark Mikhail emailed requesting an increase to the number of short term rental permits issued by the City.

Mina Awad emailed requesting an increase to the number of short term rental permits issued by the City.

Gabriela Del Cid emailed concerns with local bar establishments.

Emma Hockenberry emailed concerns with the noise levels of local bar establishments.

**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 October 7, 13, 21, and 27, 2022.**

ACTION: Approved.

**3.3. Approval of minutes of the City of Orange City Council Regular Meeting held on October 11, 2022, and Adjourned Regular Meeting held on October 25, 2022.**

ACTION: Approved minutes as presented.

**3.4. Agreement with RHA Landscape Architects Planners, Inc. for design services for the Capital Improvement Project, Hart Park Pickleball and Fitness Circuit Project.**

A speaker card was submitted for Item 3.4; therefore, the item was removed from the Consent Calendar for separate consideration.

Public Speaker

Shirley Grindle asked about the number of pickleball courts being proposed.

Staff noted that the City has not determined a total number as the project is in the design stages.

ACTION: A motion was made by Councilmember Monaco, seconded by Councilmember Gutierrez, to approve agreement with RHA Landscape Architects Planners, Inc. in the amount of \$257,092 for design services for Capital Improvement Project, Hart Park Pickleball and Fitness Circuit Design Project (20315); 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, Dumitru, Tavoularis, Gutierrez, and Murphy

**Noes:** None

**Absent:** None

**3.5. Agreements between the City of Orange and Environmental System Research Institute, Inc. (ESRI) for (1) Enterprise License Agreement for the Citywide Geographic Information System (GIS), and (2) ESRI Enterprise Advantage Program to assist the City in creating GIS applications, data conversion and training.**

ACTION: 1) Approved Enterprise Agreement (EA) with Environmental System Research Institute, Inc. for a three-year term (ESRI Quotation #Q-479546) totaling \$331,500 paid in three one-year increments \$110,500 each for the period December 7, 2022, through December 6, 2025, and authorized the Mayor and City Clerk to execute on behalf of the City. The cost includes one license of the ArcGIS Data Interoperability Extension for Desktop ArcGIS.

2) Approved the ESRI Enterprise Advantage Program (EEAP) Agreement with Environmental System Research Institute, Inc. for a three-year term (ESRI Quotation #Q-479549) in the amount of \$153,040 for the period February 8, 2023, through February 7, 2026, to assist the City in the creation of GIS applications throughout the city, data conversion, and training; and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.6. Agreement with LIN Consulting, Inc. for design of the Area Lighting Replacement at Grijalva Park project.**

ACTION: Approved agreement with LIN Consulting, Inc. in the total amount of \$48,812.50 representing the original proposal amount of \$44,375, plus a 10% contingency of \$4,437, for the Area Lighting Replacement at Grijalva Park project (20477); and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.7. Agreement with Gillis + Panichapan Architects, Inc. for Architectural and Engineering Design Services for Fire Stations No. 3 & No. 5 Building Additions.**

ACTION: Approved the agreement with Gillis + Panichapan Architects, Inc. in the amount of \$240,240, representing an original amount of \$218,400 plus a 10% contingency of \$21,840, for Architectural and Engineering Design Services for the Fire Stations No. 3 & No. 5 Building Additions project (SP-4225); and authorized the Mayor and City Clerk to execute the agreement on behalf of the City.

**3.8. Agreement with HomeAid Orange County for Permanent Local Housing Allocation funding for the Family Care Center.**

ACTION: 1) Authorized the appropriation of \$222,815 from the Building Homes & Jobs Act (312) unreserved fund balance to expenditures account number 312.6001.52611.00000 - Payment To Other Agencies-PLHA Family Care; 2) Approved the agreement with HomeAid in the amount of \$222,815 for the Family Care Center operations; and authorized the Mayor and City Clerk to execute on behalf of the City; and 3) Authorized the City Manager to make minor language changes to the agreement, related attachments, and any documents if needed and execute on behalf of the City.



**3.9. Sixth Amendment to Agreement with Granicus LLC, a Minnesota Limited Liability Company, for one year of subscription renewal.**

ACTION: Approved the Sixth Amendment to Master Subscription Agreement No. 6858 with Granicus, LLC for a one year renewal of annual subscriptions in the amount of \$109,861.58; and authorized the Mayor and City Clerk to execute the agreement on behalf of the City.

**3.10. Agreement with R. Jensen Co. Inc. and RJ Noble Inc. to move a modular building from the former Fire Headquarters to 517 W. Struck Ave. and complete necessary pavement improvements at the site.**

ACTION: 1) Approved the agreement with R. Jensen Co., Inc., in the amount of \$87,308, and authorized the Mayor and City Clerk to execute on behalf of the City.

2) Approved Amendment No. 1 with RJ Noble, Inc., for \$63,980, and authorized the Mayor and City Clerk to execute on behalf of the City.

3) Authorized the appropriation of \$151,288 from the General Fund unreserved fund balance to 100.000.51670.30200 General Fund, 517 W. Struck Transition.

**3.11. Agreement with Sagecrest Planning and Environmental for planning staff services.**

ACTION: Approved the agreement with Sagecrest Planning and Environmental in the amount of \$145,000 for planning staff services, and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.12. Third Amendment to Agreement with The Hub OC to provide on-site services, referrals, and resources for those experiencing homelessness as part of the 517 W. Struck Transition Plan. (Relates to Agenda Item 3.13)**

ACTION: 1) Approved the appropriation of \$50,000 from the Community Block Grant (310) unreserved fund balance to expenditure account number 310.9645.51770.30200, 517 W. Struck Transition.

2) Approved the Third Amendment to the Subrecipient Agreement with The Hub OC increasing compensation in the amount of \$50,000 for services in support of the 517 W. Struck Transition Plan; and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.13. Agreement with The HUB OC ("The HUB") for providing on-site services, referrals, and resources for those experiencing homelessness as part of the 517 W. Struck Project. (Relates to Agenda Item 3.12)**

ACTION: Approved Agreement with the HUB in the amount of \$400,000 for services in support of the 517 W. Struck Project; and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.14. Repair and Maintenance Agreement with the Orange County Water District for the repair of drainage facilities and adjacent slope stabilization.**

ACTION: 1) Approved the Repair and Maintenance Agreement with the Orange County Water District; and authorized the Mayor and City Clerk to execute on behalf of the City; and 2) Authorized the City Manager to execute any future documents related to this action to effect revisions, adjustments or clarifications of the details and performance of the parties appropriate to further the intended purposes of the

Agreement.

**3.15. Appropriation of \$51,110.13 in Senior Mobility Program funds.**

Item 3.15 was removed from the Consent Calendar for separate consideration by Councilmember Gutierrez.

Councilmember Gutierrez raised concerns with the current transportation service being offered to seniors.

ACTION: A motion was made by Councilmember Barrios, seconded by Councilmember Gutierrez, to authorize the appropriation of \$51,110.13 from the Traffic Improvement-Measure M2 unreserved fund balance to the following expenditure accounts for Traffic Improvement-Measure M2: \$438.25 into account number 263.7041.51780.20412, Sr. Transportation 19-20; \$490.28 into account number 263.7041.51780.30151, Sr. Transportation 20-21; and \$50,181.60 into account number 263.7041.51780.30175, Sr. Transportation 21-22. The motion carried by the following vote:

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

**Noes:** None

**Absent:** None

**3.16. Appropriation of \$17,578.26 in State of California Office of Emergency Services funding received.**

ACTION: 1) Accepted into the City's revenue budget \$17,578.26 in strike team reimbursement funds from the California Office of Emergency Services (Cal-OES), into the revenue account numbers for Cal-OES reimbursements as follows:

Cal-OES reimbursements (revenue account 100.3024.48212.xxxxx):

\$ 8,550.06 .40296 - OES Pre-Position #220001  
9,028.20 .40299 - Coastal Fire

2) Authorized the appropriation of \$17,038.61 into the expenditure account numbers for Overtime-Safety as follows:

Overtime-Safety (expenditure account 100.3024.50221.xxxxx):

\$ 8,135.07 .40296 - OES Pre-Position #220001  
8,903.54 .40299 - Coastal Fire

3) Authorized the appropriation of \$539.65 into the expenditure account numbers for Strike Team Expenditures as follows:

Strike Team (expenditure account 100.3024.53860.xxxxx):

\$ 414.99 .40296 - OES Pre-Position #220001  
124.66 .40299 - Coastal Fire

**3.17. Appropriation of \$33,700 in designated donation funding received from the Orange Public Library Foundation.**

ACTION: 1) Accepted into the City's budget a \$33,700 donation from Orange Public Library Foundation, into revenue account number 100.2001.48390.19322, General Fund - Orange Public Library Foundation.

2) Authorized the appropriation of \$33,700 into expenditure account number 100.2004.55131.19322, General Fund - Orange Public Library Foundation.

**3.18. Approval of plans and specifications for Community Development Block Grant Fiscal Year 2022-2023 Sycamore and Palmyra Neighborhood Street Rehabilitation and Americans with Disabilities Act (ADA) Wheelchair Access Ramp Replacement at Various Locations; and authorization to advertise for bids.**

ACTION: Approved plans and specifications and authorized advertising Bid No. 22-23.17 (SP-4237).

**3.19. Claims for Damages.**

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

1. Patricia L. Frost
2. Gad Herbert Ferrari Rivera
3. Refugio Lopez Alonso

**3.20. Award of Contract to CT&T Concrete Paving, Inc. for Plaza Park Safety Enhancement Project; Bid No. 22-23.13.**

ACTION: 1) Authorized the appropriation of \$175,000 from the Capital Projects unreserved fund balance to expenditure account number 500.5032.56100.16302, Minor Traffic Control Devices; and 2) Awarded the contract to CT&T Concrete Paving, Inc. in the total amount of \$226,523 representing an original bid amount of \$205,930, plus a 10% contingency of \$20,593, for the Plaza Park Safety Enhancement Project; and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.21. Award of Contract to Towo Enterprise, Inc. for Annual Concrete Replacement at Various Locations, Phase I, FY 2022-23; Bid No. 22-23.09.**

ACTION: Approved the contract with Towo Enterprise, Inc. in the amount of \$486,335, representing an original bid amount of \$422,900, plus a 15% contingency of \$63,435; and authorized the Mayor and City Clerk to execute on behalf of the City.

**3.22. First Amendment to Contract with RS Construction and Development, Inc.; and Final Acceptance of Bid No. 21-22.22, Public Works and Community Development Front Counter Remodel Project and authorization to file Notice of Completion.**

ACTION: 1) Authorized the appropriation of \$57,500 from the Capital Projects unreserved fund balance to expenditure account number 500.5028.56020.20408 Capital Projects - Public Works and Community Development Front Counter Remodel; 2) Approved the First Amendment to Contract in the amount of \$57,500 to RS Construction and Development, Inc. for the additional work; and authorized the Mayor and City Clerk to execute on behalf of the City; and 3) Accepted Public Works and Community Development Front Counter Remodel Project as complete (SP-4097), and authorized staff to file Notice of Completion with the County Recorder.

**3.23. First Amendment to Contract with Gentry General Engineering, Inc.; Final Acceptance of Bid No. 21-22.38, Chapman Ave. and Yorba St. Sidewalk Repair; and authorization to file Notice of Completion.**

ACTION: 1) Approved the First Amendment to Contract with Gentry General Engineering, Inc. in the amount of \$37,525.99 for the additional work; and authorized the Mayor and City Clerk to execute on behalf of the City; and 2) Accepted Chapman

Ave. and Yorba St. Sidewalk Repair Project as complete (SP-4212); and authorized staff to file Notice of Completion with the County Recorder.

- 3.24. Second Reading and adoption of an Ordinance of the City Council of the City of Orange amending Titles 12, 13, and 15 of the Orange Municipal Code adopting and amending the 2022 editions of the California Building Standards Codes and related model codes, with appendices, relating to the building codes. Ordinance No. 06-22.**

ACTION: Adopted Ordinance No. 06-22.

- 3.25. Second Reading and adoption of an Ordinance of the City Council of the City of Orange deleting Chapter 15.32, City of Orange Fire Code, in its entirety and adding Chapter 15.32, adopting and amending the 2022 California Fire Code and portions of the 2021 International Fire Code as the City of Orange Fire Code, to Title 15 (Buildings and Construction) of the Orange Municipal Code. Ordinance No. 07-22.**

ACTION: Adopted Ordinance No. 07-22.

- 3.26. Authorize purchase of cartridge filters and O-rings for Well PFAS treatment systems from various vendors.**

ACTION: Approved purchase orders for PFAS cartridge filters and O-rings in the amount of \$300,000 with Towner Filtration, \$300,000 with Pure Process Filtration, and \$100,000 with PDDA Filtration System for a total amount of \$700,000.

- 3.27. Purchase order for major Fire Engine and Apparatus repairs from Fire Apparatus Solutions.**

ACTION: Approved the purchase order for major Fire Engine and Apparatus repairs from Fire Apparatus Solutions in the amount not to exceed \$100,000 in Fiscal Year 2022-2023.

- 3.28. Time extension for Zone Change No. 1297-19, Tentative Tract Map No. 0049-19, Major Site Plan Review No. 0969-19, Design Review No. 4969-19, and Subsequent Mitigated Negative Declaration No. 1865-19 (32-unit Cohen Residential Project).**

ACTION: 1) Approved a one-year time extension for Zone Change No. 1297-19, Tentative Tract Map No. 0049-19, Major Site Plan Review No. 0969-19, Design Review No. 4969-19, and Subsequent Mitigated Negative Declaration No. 1865-19 pursuant to Orange Municipal Code Section 17.08.060; and 2) Approved a six-year time extension for Zone Change No. 1297-19, Tentative Tract Map No. 0049-19, Major Site Plan Review No. 0969-19, Design Review No. 4969-19, and Subsequent Mitigated Negative Declaration No. 1865-19 pursuant to Subdivision Map Act Section 66452.6(e).

- 3.29. Monthly Treasurer's Report for July, August, and September 2022.**

ACTION: Received and filed.

- 3.30. Addition of 167 N. Little Main Street to the City of Orange Historic Resources Inventory.**

Written Public Comment

Tony Trabucco, OTPA, submitted an eComment in support of approval.

ACTION: Adopted findings of the cultural resource assessment and include 167 N. Little Main Street in the City of Orange Historic Resources Inventory.

**3.31. Approval of amendment to Orange Management Association (OMA) salary tables increasing the salary for the classification of Senior Plan Check Engineer. Resolution No. 11425.**

ACTION: Adopted Resolution No. 11425. A Resolution of the City Council of the City of Orange amending Resolution No. 11272 between the City of Orange and the Orange Management Association.

**3.32. Classification, compensation, and terms of employment of Part-Time and Limited Duration employees for the period of July 1, 2022 through December 31, 2023. Resolution Nos. 11423 and 11424.**

ACTION: 1) Adopted Resolution No. 11423. A Resolution of the City Council of the City of Orange relating to the classification, compensation, and terms of employment for Part-time and Limited Duration employees of the City of Orange effective July 1, 2022 through and including December 31, 2023, and repealing Resolution No. 11359 and amendments thereto.

2) Adopted Resolution No. 11424. A Resolution of the City Council of the City of Orange rescinding Resolution No. 11411 and amending the citywide pay schedule in accordance with the requirements of the California Code of Regulations, Title 2, Section 570.5.

**3.33. Adoption of Fiscal Year Ended June 30, 2022, Measure M2 Expenditure Report. Resolution No. 11420.**

ACTION: Adopted Resolution No. 11420. A Resolution of the City Council of the City of Orange concerning the Fiscal Year 2021-2022 Measure M2 Expenditure Report for the City of Orange.

## **Approval of the Consent Calendar**

Items 3.4 and 3.15 were removed from the Consent Calendar and heard separately. All other items were approved as recommended.

A motion was made by Councilmember Dumitru, seconded by Councilmember Monaco, to approve the Consent Calendar as recommended. The motion carried by the following vote:

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

**Noes:** None

**Absent:** None

## **END OF CONSENT CALENDAR**

\* \* \* \* \*

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

None

## 5. REPORTS FROM COUNCILMEMBERS

### Councilmember Gutierrez

Councilmember Gutierrez highlighted the following local business: OC Martial Arts & Fitness.

### Councilmember Tavoularis

Councilmember Tavoularis welcomed Interim City Manager Tom Kisela, and announced the third ad hoc committee meeting for the North Tustin revisioning plan is scheduled for Thursday, January 26 at 5:30 p.m. in the Council Chamber.

### Councilmember Barrios

Councilmember Barrios requested a memorial adjournment for community member Rudy Diaz.

## 6. ADMINISTRATIVE REPORTS

### 6.1. Grijalva Park Skatepark Project Update.

Community Services Assistant Director Emily Bustamante provided a staff report and answered Council's questions. Council discussed design concept, available funds, maintenance costs, and grants eligibility.

Staff confirmed the \$1.7 million in lieu park fees received by The Irvine Company for the Santiago Hills development could be used to fund the skate park.

A motion was made by Councilmember Monaco, seconded by Councilmember Tavoularis, to allocate development impact fees received by The Irvine Company earmarked for Grijalva Park to fully fund the development of a skate park at Grijalva Park. The motion carried by the following vote:

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

**Noes:** None

**Absent:** None

### 6.2. Historic Property Preservation Agreements (Mills Act Contracts) for three qualified historic properties.

#### Public Speaker

Doug Ely, architect for the 515 and 529 S. Grand St. Project, spoke in support of approving the Mills Act Contracts for these two properties.

#### Written Public Comments

Tony Trabucco, OTPA, emailed in opposition of approving Mills Act Contracts for 515 and 529 S. Grand St.

Alison Vukovich emailed in support of approving Mills Act Contracts for 515 and 529 S. Grand St.

During deliberations, Council discussed the Mills Act guidelines and intent of the Mills Act to preserve historical structures.

A motion was made by Mayor Murphy, seconded by Mayor pro tem Nichols, to approve the three Mills Act Contracts (MAC-413.0-22, MAC-414.0-22, and MAC-418.0-22) 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. The motion carried by the following vote:

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

**Noes:** None

**Absent:** None

- 6.3. Request to implement permit parking on both sides of Lilac Lane from Culver Avenue to Orchard Avenue, both sides of Plum Lane from Culver Avenue to Orchard Avenue, and both sides of Orchard Avenue from Flower Street to the easterly terminus of the street. Resolution No. 11422.**

Public Speaker

Diane Vallejo spoke in support of approving the permit parking.

A motion was made by Mayor pro tem Nichols, seconded by Councilmember Monaco, to: 1) Approve permit parking on both sides of Lilac Lane from Culver Avenue to Orchard Avenue; 2) Approve permit parking on both sides of Plum Lane from Culver Avenue to Orchard Avenue; 3) Approve permit parking on both sides of Orchard Avenue from Flower Street to the easterly terminus of the street; and 4) Adopt Resolution No. 11422. A Resolution of the City Council of the City of Orange rescinding Resolution No. 11385 and adopting a revised master resolution of permit parking areas within the City of Orange.

The motion carried by the following vote:

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

**Noes:** None

**Absent:** None

RECESS: The City Council recessed at 7:46 p.m. and reconvened at 7:59 p.m. with all Members present.

**7. REPORTS FROM CITY MANAGER**

None

**8. PUBLIC HEARINGS**

- 8.1. Public Hearing to consider Conditional Use Permit No. 3154-21, Design Review No. 5060-21, and Minor Site Plan Review No. 1074, and Zone Change No. 1305-21 for a new express car wash facility and associated vacuum canopies located at 1325 West Katella Avenue, and finding that the Zone Change was already considered in the scope of the City of Orange General Plan Program EIR, and the project is exempt from CEQA.**

**Note: Applicant has requested to continue this item to a date uncertain.**

A motion was made by Councilmember Monaco, seconded by Mayor pro tem Nichols, to continue the Public Hearing, Item 8.1, to a date uncertain. The motion carried by the following vote:

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

**Noes:** None

**Absent:** None

**8.2. Public Hearing to consider Appeal No. 0558-22, District Lounge, 223 W. Chapman Avenue.**

Councilmember Barrios announced as the appellant she would not participate from the dais; she left the dais at 8:02 p.m.

Robert Garcia provided an overview of the proposed project.

Mayor Murphy opened the Public Hearing at 8:10 p.m.

Public Speakers

Councilmember Arianna Barrios, appellant, spoke in support of approving the appeal.

Mario Marovic, applicant, spoke in support of denying the appeal and requested modifications to the conditions of approval.

Richard Muniz spoke in support of approving the appeal.

Written Public Comment

Lauren Maples emailed concerns with the noise levels at the District Lounge.

Mayor Murphy closed the Public Hearing at 8:55 p.m.

Council discussed noise levels, staffing of proposed patio, and conditions as outlined in the CUP.

A motion was made by Councilmember Monaco to deny Appeal No. 0558-22; modify Resolution No. PC 26-22 Condition Nos. 29, 21, and 1 by incorporating the applicant's suggested changes; remove Condition No. 18; and refund the applicant's City fees of \$10,000.

During further discussion Councilmember Dumitru requested the refund be reduced by 50% (up to \$5,000). Councilmember Monaco agreed to the amendment.

An amended motion was made by Councilmember Monaco, seconded by Councilmember Dumitru, to deny Appeal No. 0558-22; modify Resolution No. PC 26-22 Condition Nos. 29, 21, and 1 by incorporating the applicant's suggested changes; remove Condition No. 18; and refund the applicant's City fees of up to \$5,000. The motion carried by the following vote:

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

**Noes:** Gutierrez

**Absent:** None

**Recused:** Barrios



Conditions of approval were modified as follows:

Condition No. 29

The patio shall be enclosed, and any gates located on the patio shall be restricted to emergency exit use Thursday - Saturday after 10:00 p.m. or during special events. Sign(s) shall be posted on all patio gate(s) indicating "Emergency Exit Only on Thursday to Saturday after 10:00 p.m." Nothing herein shall prohibit staff from allowing or otherwise assisting any customer with a disability to use the patio gate to enter or exit the premises at any time to comply with ADA requirements.

Condition No. 21

There shall be no advertising of alcoholic beverages or drink specials on the exterior of the business at any time. There shall be no generic drink specials, such as: "half off drinks, two for one drinks, buy one get one free, etc." No alcoholic beverages will be discounted more than 30% off its regular price.

Condition No. 1

That all existing conditions of approval as approved by Conditional Use Permit No. 2760-09, Planning Commission Resolution No. PC 30-10 shall remain in effect. To the extent there are any conflicts between the conditions of approval as approved by Conditional Use Permit No. 2760-09, and the conditions of approval in this Conditional Use Permit No. 3186-22, the conditions of approval in Conditional Use Permit No. 3186-22 shall prevail.

Councilmember Barrios returned to the dais at 9:48 p.m.

RECESS: The City Council recessed at 9:49 p.m. and reconvened at 9:58 p.m. with all Members present, except Councilmember Monaco who was absent.

- 8.3. Public Hearing to consider Major Site Plan Review No. 1013-20, Tentative Parcel Map No. 0017-20, Design Review No. 5011-20 and Development Agreement No. 0008-22; a request to rehabilitate two historic buildings at 410 W. Chapman Avenue and 135 N. Atchison Street, remove non-historic structures, construct two new buildings, and provide parking relief to Old Town Gateway, LLC in return for dedication and maintenance of a public access pedestrian walkway between N. Atchison Street and N. Cypress Street, and finding of CEQA exemption. Ordinance No. 08-22 and Resolution No. 11421.**

Mayor Murphy opened the Public Hearing at 10:06 p.m.

Public Speakers

Leason Pomeroy, applicant, spoke in support of the project.

Al Ricci, applicant, spoke in support of the project.

Written Public Comment

Tony Trabucco, OPA, emailed concerns with the process of delisting a historic resource and requested Council consider continuing the item.

Mayor Murphy closed the Public Hearing at 10:20 p.m.

During deliberations, Council discussed parking, width of paseo, and size of third building.

A motion was made by Councilmember Barrios, seconded by Councilmember Gutierrez to approve Buildings 1 and 2, excluding Building 3 to allow for additional parking.

During further discussion, Council asked about the possibility of widening the paseo.

Councilmember Dumitru made a substitute motion to approve the project as recommended with the removal of the glass partitions between buildings 2 and 3 creating a second outdoor pedestrian access.

A motion was made by Councilmember Dumitru, seconded by Mayor Murphy, to:

1) Introduce and conduct First Reading of Ordinance No. 08-22 approving Development Agreement No. 0008-22 vesting development rights with Old Town Gateway, LLC in return for dedication and maintenance of a public access pedestrian walkway between N. Atchison Street and N. Cypress Street. An Ordinance of the City Council of the City of Orange approving a Development agreement with Old Town Gateway, LLC for a project on a site located at 401 W. Chapman Avenue and 135 N. Atchison Street.

2) Adopt Resolution No. 11421. A Resolution of the City Council of the City of Orange approving Major Site Plan Review No. 1013-20, Tentative Parcel Map No. 0017-20, Design Review No. 5011-20 and Development Agreement No. 0008-22 to rehabilitate two historic buildings and remove non-historic sheds to construct two new commercial buildings and create a pedestrian paseo at 410 W. Chapman Avenue and 135 N. Atchison Street.

3) Remove glass partitions between buildings 2 and 3 creating a second outdoor pedestrian access.

The motion carried by the following vote:

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

**Noes:** Barrios, and Gutierrez

**Absent:** Monaco

**(Item 8.5 was re-ordered to be heard before Item 8.4.)**

**8.5. Public Hearing to receive and file report summarizing measures taken to evaluate impacts addressed by interim Ordinance No. 18-21; and to consider adoption of second extension of interim Ordinance No. 18-21 and finding of CEQA exemption.**

Mayor Murphy opened the Public Hearing at 11:12 p.m.; there being no speakers, Mayor Murphy closed the Public Hearing at 11:12 p.m.

A motion was made by Mayor pro tem Nichols, seconded by Councilmember Gutierrez, to:

1) Receive and file report of measures taken.

2) Adopt Ordinance No. 18-21-B. Second extension of an interim Ordinance of the City

Council of the City of Orange amending Title 16 (Subdivisions) and Title 17 (Zoning) of the Orange Municipal Code by enacting ministerial standards applicable to lot splits in single-family residential zones allowed as a result of SB 9, enacting ministerial standards applicable to the location, access, size and setback of second dwelling units in single-family residential zones allowed as a result of SB 9, and revising definitions to clarify said development standards.

The motion carried by the following vote:

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

**Noes:** None

**Absent:** Monaco

**8.4. Public Hearing to consider Introduction and First Reading of Ordinance No. 10-22 creating the Neighborhood Preservation Overlay Zone; providing development standards to regulate the addition of bedrooms or bathrooms to a primary residence within specified boundaries; revising or adding definitions pertaining to residential additions and student housing; and updating provisions for reviewing body approval of specified matters.**

Entered into the record: A proposed revision to Ordinance No. 10-22, Section 17.28.080C.3, to establish a baseline from which the additional 100 square feet of open space is to be provided. Should the required open space already exist on a lot as a surplus, then the surplus may fulfill the requirement.

Mayor Murphy opened the Public Hearing at 11:14 p.m.

Public Speaker

Doug Ely spoke in support of the ordinance but expressed concerns with some of the sections.

Staff clarified that any deviations from the ordinance can be reviewed by the Zoning Administrator for approval.

Written Public Comment

Tony Trabucco, OTPA, submitted an eComment in support of approving the proposed ordinance.

Mayor Murphy closed the Public Hearing at 11:18 p.m.

A motion was made by Councilmember Barrios, seconded by Councilmember Gutierrez, to Introduce and conduct First Reading of amended Ordinance No. 10-22. An Ordinance of the City Council of the City of Orange creating the Neighborhood Preservation Overlay Zone; providing development standards to regulate the addition of bedrooms or bathrooms to a primary residence within specified boundaries; revising or adding definitions pertaining to residential additions and student housing; and updating provisions for reviewing body approval of specified matters. The motion carried by the following vote:

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

**Noes:** None

**Absent:** Monaco

**8.6. Public Hearing to consider Introduction and First Reading of Ordinance No. 09-22 containing administrative updates to various sections of the Orange Municipal Code and finding of CEQA exemption.**

Mayor Murphy opened the Public Hearing at 11:22 p.m.; there being no speakers, Mayor Murphy closed the Public Hearing at 11:22 p.m.

A motion was made by Mayor pro tem Nichols, seconded by Councilmember Dumitru, to Introduce and conduct First Reading of Ordinance No. 09-22. An Ordinance of the City Council of the City of Orange amending various sections of the Orange Municipal Code to delete outdated language, update references to conform with current law and code provisions, make administrative adjustments, and achieve internal consistency. The motion carried by the following vote:

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

**Noes:** None

**Absent:** Monaco

**9. ITEMS RELATED TO THE INDUSTRIAL DEVELOPMENT AUTHORITY**

**9.1. Report from the Finance Director of the Industrial Development Authority of the City of Orange.**

A motion was made by Mayor Murphy, seconded by Councilmember Barrios, to receive and file report. The motion carried by the following vote:

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

**Noes:** None

**Absent:** Monaco

**10. ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:25 p.m.

The next Regular City Council meeting will be held on Tuesday, December 13, 2022, at 6:00 p.m., in the Council Chamber, with Closed Session beginning at 5:00 p.m., if necessary.

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PAMELA COLEMAN  
CITY CLERK

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MARK A. MURPHY  
MAYOR



# Agenda Item

## City Council

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**Item #:** 3.5.

12/13/2022

**File #:** 22-0706

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Jeffrey S. Adams, Interim Community Development Director

### 1. SUBJECT

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

### 2. SUMMARY

The Community Development Department's Historic Preservation Program received nine applications for new Mills Act Contracts in the Old Towne and Eichler Historic Districts for the Fall 2022 application period. Staff recommends approval and execution of the contracts.

### 3. RECOMMENDED ACTION

Approve nine 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 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 nine Mills Act applications received in Fall 2022, the City may incur a total reduction of property tax of approximately \$6,079 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 six historic properties totals \$772,491 over ten years.

The \$1,000 application fee for each contract offsets the cost of staff review, property inspection, and this public meeting. The \$35 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 nine qualified historic properties were received prior to the August 4, 2022 application deadline. Five properties are within the Old Towne Historic District and four properties are in the Eichler Historic Districts.

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

- Table Summary of Nine Mills Act Applications
- Mills Act Contract MAC 412.0-22 with Photograph
- Mills Act Contract MAC 419.0-22 with Photograph
- Mills Act Contract MAC 420.0-22 with Photograph
- Mills Act Contract MAC 422.0-22 with Photograph
- Mills Act Contract MAC 423.0-22 with Photograph
- Mills Act Contract MAC 424.0-22 with Photograph
- Mills Act Contract MAC 425.0-22 with Photograph
- Mills Act Contract MAC 426.0-22 with Photograph
- Mills Act Contract MAC 427.0-22 with Photograph



# Agenda Item

## City Council

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**Item #:** 3.5.

12/13/2022

**File #:** 22-0706

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Jeffrey S. Adams, Interim Community Development Director

### 1. SUBJECT

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

### 2. SUMMARY

The Community Development Department's Historic Preservation Program received nine applications for new Mills Act Contracts in the Old Towne and Eichler Historic Districts for the Fall 2022 application period. Staff recommends approval and execution of the contracts.

### 3. RECOMMENDED ACTION

Approve nine 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 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 nine Mills Act applications received in Fall 2022, the City may incur a total reduction of property tax of approximately \$6,079 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 six historic properties totals \$772,491 over ten years.

The \$1,000 application fee for each contract offsets the cost of staff review, property inspection, and this public meeting. The \$35 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 nine qualified historic properties were received prior to the August 4, 2022 application deadline. Five properties are within the Old Towne Historic District and four properties are in the Eichler Historic Districts.

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

- Table Summary of Nine Mills Act Applications
- Mills Act Contract MAC 412.0-22 with Photograph
- Mills Act Contract MAC 419.0-22 with Photograph
- Mills Act Contract MAC 420.0-22 with Photograph
- Mills Act Contract MAC 422.0-22 with Photograph
- Mills Act Contract MAC 423.0-22 with Photograph
- Mills Act Contract MAC 424.0-22 with Photograph
- Mills Act Contract MAC 425.0-22 with Photograph
- Mills Act Contract MAC 426.0-22 with Photograph
- Mills Act Contract MAC 427.0-22 with Photograph



<b>Summary of Mills Act Applications</b> <b>December 2022</b>						
<b>Contract No.</b>	<b>Property Address</b>	<b>Historic District</b>	<b>Property Owners</b>	<b>Estimate for Rehabilitation Plan</b>	<b>Property Tax Savings over 10 Years</b>	<b>Annual Property Tax Reduction to City</b>
MAC 412.0-22	191 N. Grand Street	Old Towne	Dana and Nathan Heyde	\$85,000	\$72,409	\$983
MAC 419.0-22	367 S. Center Street	Old Towne	Julio and Megan Morales	\$59,160	\$30,396	\$413
MAC 420.0-22	405 E. Maple Street	Old Towne	Bradley and Meghan Schoenleben	\$158,500	\$34,020	\$462
MAC 422.0-22	605 S. Woodland Street	Fairhaven	Sharon E. O'Connell	\$61,591	\$55,066	\$748
MAC 423.0-22	552 S. Woodland Street	Fairhaven	Daniel and Kimberly Mariscal, Kevin Roy and Kimberly Heuer	\$114,000	\$23,467	\$319
MAC 424.0-22	825 E. Ferndale Avenue	Fairmeadow	Ryan and Annabelle Baldasari	\$53,950	\$39,109	\$531
MAC 425.0-22	421 S. Orange Street	Old Towne	Michael Christian and Katie Ellen Montgomery	\$52,500	\$39,853	\$541
MAC 426.0-22	3730 E. Kirkwood Avenue	Fairhaven	Trevor Alan and Blyth Marie Perea	\$95,495	\$91,425	\$1,242
MAC 427.0-22	322 E. Palmyra Avenue	Old Towne	Andrew Morey and Heather Johnson	\$92,295	\$61,881	\$840

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

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Property Address: 191 N. Grand Street  
APN: 039-253-01  
Mills Act Contract Number: 412.0-22

### **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 NATHAN WAYNE HEYDE and DANA MARIE HEYDE, as Trustees of the Heyde Family Revocable Trust (“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 191 N. Grand Street in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 039-253-01 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Nathan Wayne and Dana Marie Heyde  
2517 N. Falconer Way  
Orange, CA 92867

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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Nathan Wayne Heyde

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Dana Marie Heyde

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**The West 86 feet of Lot 8 in Block “A” of 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 County.**

**[APN 039-253-01]**

## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**191 N. Grand Street**

<b>Priority</b>	<b>Description of Work</b>	<b>Cost Estimate</b>	<b>Completion Date</b>
1.	Engage a structural engineer experienced in historic preservation to evaluate the foundation, structure, and chimney, and make recommendations for repair and retrofit.	\$5,000	2024
2.	Retrofit of foundation according to structural engineer recommendation	\$10,000	2024
3.	Hardware repair and replacement	\$2,500	2025
4.	Re-roofing; roof maintenance (ongoing), chimney maintenance	\$15,000	2028
5.	Repair and replace siding; termite report; dry rot repair and replacement	\$2,500	2028
6.	Maintenance of original windows, trim, etc.	\$5,000	2028
7.	Maintenance of original wood floors, doors, frames, and historic architectural elements	\$15,000	2028
8.	Maintenance and report of exterior materials and features, painting, fence, weatherproofing	\$25,000	2028
9.	Repair and restoration of front porch, railing, stops, seismic retrofit	\$5,000	2030
<b>TOTAL</b>		<b>\$85,000.00</b>	



**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # 30-159389

HRI # 038755

Trinomial ORA

NRHP Status Code 1D

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

GRAND\_N\_191\_\_APN\_039-253-01

P1. Other Identifier: Same building as: 306 E. Maple.

\*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 1/4 of Sec ; B.M.

c. Address: 191 - N GRAND ST , # City: Orange Zip: 92866

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: Frame - Wood siding

A high two-story house with a single front-facing, steep-pitched gable roof. One-half of the front facade is devoted to a recessed entry porch supported by a classical column. The original siding has been covered by asbestos shingles. A smaller gabled dormer is present on the side facing Maple Street.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☒ Element of District ☐ District ☐ Other (Isolates, etc.)



P5b. Description of Photo: 2005  
(View, date, accession #)

\*P6. Date Constructed/ Age and Source:

1900 c

☒ Historic ☐ Prehistoric ☐ Both

\*P7. Owner and Address:

\*P8: Recorded by: (Name, affiliation, and address)  
D. Gest, P. LaValley, D.  
Matsumoto

Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

\*P9. Date Recorded:

May, 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey. AEGIS (1991) Historic Building Inventory  
Update. Heritage Orange County, Inc. (1982) Orange Historic Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary # 30-159389  
HRI # 038755  
\*NRHP Status Code 1D

Page 2 of 3

\*Resource Name or #: GRAND\_N\_191\_\_APN\_039-253-01  
(Assigned by Recorder)

B1. Historic Name: John and Minnie Hutchinson House

B2. Common Name:

B3. Original Use: RES B4. Present Use: RES

\*B5. Architectural Style: Victorian

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1900 c ☒ Historic ☐ Prehistoric ☐ Both  
The original siding has been covered by asbestos shingles.

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Unknown

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Old Towne: Early Settlement (c. 1870 - 1920) Applicable Criteria: AC

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Good Condition - Minor and reversible or appropriate changes to original structure.

Site Integrity:

Opportunities:

The house was originally owned by John and Minnie Hutchinson. Mr. Hutchinson was a retired farmer.

B11. Additional Resource Attributes: (List attributes and codes)

\*B12. References:

Orange Daily News. Sanborn Maps (1922, 1950).

B13. Remarks: (Continues on Pg.3.)

Status change since 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 # 30-159389  
HRI # 038755  
Trinomial ORA

Page 3 of 3

\*Resource Name or #:  
(Assigned by Recorder)

GRAND\_N\_191\_\_APN\_039-253-01

Recorded by:

D. Gest, P. LaValley, D. Matsumoto  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: May, 2005

☒ Continuation ☐ Update

Years Surveyed: 1982, 1991, 2005

Listed in National Register: 1997

General Plan: LDR # of Buildings: 1

Planning Zone: O-P # of Stories: 2

Lot Acre: 0.1046 # of Units: 2

Principal Building Sqft: 1480

Description of Photo: 1991

B6. Construction History (Continued from Pg.2):

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):



State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # 30-159389

HRI # 038755

Trinomial ORA

NRHP Status Code 1D

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

MAPLE\_E\_306\_\_APN\_039-253-01

P1. Other Identifier: Same building as: 191 N. Grand.

\*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 1/4 of Sec ; B.M.

c. Address: 306 - E MAPLE ST , # City: Orange Zip: 92866

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: Frame - Wood siding

A high two-story house with a single front-facing, steep-pitched gable roof. One-half of the front facade is devoted to a recessed entry porch supported by a classical column. The original siding has been covered by asbestos shingles. A smaller gabled dormer is present on the side facing Maple Street.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☒ Element of District ☐ District ☐ Other (Isolates, etc.)



P5b. Description of Photo: 2012  
(View, date, accession #)

\*P6. Date Constructed/ Age and Source:

1900 c

☒ Historic ☐ Prehistoric ☐ Both

\*P7. Owner and Address:

\*P8: Recorded by: (Name, affiliation, and address)  
D. Gest, P. LaValley, D.  
Matsumoto

Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

\*P9. Date Recorded:

May, 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey. AEGIS (1991) Historic Building Inventory  
Update. Heritage Orange County, Inc. (1982) Orange Historic Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary # 30-159389  
HRI # 038755  
\*NRHP Status Code 1D

Page 2 of 3

\*Resource Name or #: MAPLE\_E\_306\_\_APN\_039-253-01  
(Assigned by Recorder)

B1. Historic Name: John and Minnie Hutchinson House

B2. Common Name:

B3. Original Use: RES B4. Present Use: RES

\*B5. Architectural Style: Victorian

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1900 c ☒ Historic ☐ Prehistoric ☐ Both  
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\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Unknown

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Old Towne: Early Settlement (c. 1870 - 1920) Applicable Criteria: AC

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

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Site Integrity:

Opportunities:

The house was originally owned by John and Minnie Hutchinson. Mr. Hutchinson was a retired farmer.

B11. Additional Resource Attributes: (List attributes and codes)

\*B12. References:

Orange Daily News. Sanborn Maps (1922, 1950).

B13. Remarks: (Continues on Pg.3.)

Status change since 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 # 30-159389  
HRI # 038755  
Trinomial ORA

Page 3 of 3

\*Resource Name or #:  
(Assigned by Recorder)

MAPLE\_E\_306\_\_APN\_039-253-01

Recorded by:

D. Gest, P. LaValley, D. Matsumoto  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: May, 2005

☒ Continuation ☐ Update

Years Surveyed: 1982, 1991, 2005

Listed in National Register: 1997

General Plan: LDR # of Buildings: 1

Planning Zone: O-P # of Stories: 2

Lot Acre: 0.1046 # of Units: 2

Principal Building Sqft: 1480

Description of Photo: 1991

B6. Construction History (Continued from 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: 367 S. Center Street  
APN: 390-404-07  
Mills Act Contract Number: 419.0-22

### **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 JULIO MORALES and MEGAN MORALES, as Trustees of the Julio and Megan Morales Revocable Trust (“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 367 S. Center Street in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 390-404-07 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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	Julio and Megan Morales
Attn.: City Clerk	
300 E. Chapman Avenue	245 S. Via Montanera
Orange, CA 92866	Anaheim, CA 92807

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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Julio Morales

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Megan Morales

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Lot four of Block B of George Achison’s Subdivision of Richland Farm Lots 41 and 42, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page 49 of Miscellaneous Maps, Records of Orange County, excepting therefrom the following:**

**Beginning at the Northwest corner of said Lot 4;**

**Thence East along the North line of said Lot 4 a distance of 68 feet and nine inches; and**

**Thence South parallel with the West line of said Lot 4 a distance of 2 feet;**

**Thence West parallel with the said North line of said Lot 4 a distance of 68 feet and nine inches to the West line of said Lot 4;**

**Thence north along said West line of said Lot 4 to the Point of Beginning.**

**[APN 390-404-07]**

## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**367 S Center Street**

Priority	Description of Work	Cost Estimate	Completion Date
1.	Replace broken windows, repair pully system on original windows	\$4,860.00	2023
2.	Replace roof	\$18,000.00	2025
3.	Engage structural engineer experienced in historic preservation to evaluate foundation and structure, and make recommendations for repair and retrofit	\$15,500.00	2025
4.	Exterior repairs including paint, repair siding and window casings	\$13,600.00	2027
5.	Repair damaged wood on garage and patio cover	\$4,400.00	2029
6.	Re-texture and paint side and back porches, including stairs	\$2,800.00	2030
<b>TOTAL</b>		<b>\$59,160.00</b>	

**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]



State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # 30-158954

HRI # 038320

Trinomial ORA

NRHP Status Code 1D

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

CENTER\_S\_367\_\_APN\_390-404-07

P1. Other Identifier:

\*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 1/4 of Sec ; B.M.

c. Address: 367 - S CENTER ST , # City: Orange Zip: 92866

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: Frame - Asbestos siding

A box plan house with steep-pitched hip roof contrasted by smaller, front-facing gable which forms the attic dormer. Entry is via a recessed corner porch supported by Classical columns.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☒ Element of District ☐ District ☐ Other (Isolates, etc.)



P5b. Description of Photo: 2005  
(View, date, accession #)

\*P6. Date Constructed/ Age and Source:

1909

☒ Historic ☐ Prehistoric ☐ Both

\*P7. Owner and Address:

\*P8: Recorded by: (Name, affiliation, and address)  
D. Gest, P. LaValley, D.  
Matsumoto

Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

\*P9. Date Recorded:

April, 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey. AEGIS (1991) Historic Building Inventory  
Update. Heritage Orange County, Inc. (1982) Orange Historic Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary # 30-158954  
HRI # 038320  
\*NRHP Status Code 1D

Page 2 of 3

\*Resource Name or #: CENTER\_S\_367\_\_APN\_390-404-07  
(Assigned by Recorder)

B1. Historic Name: Unknown

B2. Common Name:

B3. Original Use: RES B4. Present Use: RES

\*B5. Architectural Style: Hip Roof Cottage

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1909 ☒ Historic ☐ Prehistoric ☐ Both

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Unknown

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Old Towne: Early Settlement (c. 1870 - 1920) Applicable Criteria: AC

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Good Condition - Minor and reversible 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 on Pg.3.)

Status change since 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 # 30-158954  
HRI # 038320  
Trinomial ORA

Page 3 of 3

\*Resource Name or #:  
(Assigned by Recorder)

CENTER\_S\_367\_\_APN\_390-404-07

Recorded by:

D. Gest, P. LaValley, D. Matsumoto  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: April, 2005

☒ Continuation ☐ Update

Years Surveyed: 1982, 1991, 2005

Listed in National Register: 1997

General Plan: LDR # of Buildings: 1

Planning Zone: R-2-6 # of Stories: 1

Lot Acre: 0.124 # of Units: 1

Principal Building Sqft: 1213

Description of Photo: 1991

B6. Construction History (Continued from 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

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Property Address: 405 E. Maple Avenue  
APN: 039-244-10  
Mills Act Contract Number: 420.0-22

### **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 BRADLEY SCHOENLEBEN and MEGHAN SCHOENLEBEN, as Husband and Wife as Community 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 405 E. Maple Avenue in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 039-244-10 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Bradley and Meghan Schoenleben  
405 E. Maple 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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Bradley Schoenleben

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Meghan Schoenleben

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Lot 1 in Block “B” 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, recorded in the Office of the County Recorder of Said County.**

**[APN 039-244-10]**

## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**405 E. Maple Avenue**

Priority	Description of Work	Cost Estimate	Completion Date
1.	Reinforce weak floors throughout the house and add support. Spot treat flooring for termites.	\$6,000	2022
2.	Plumbing: Fix outdated plumbing in bathrooms, repair damaged flooring and damaged walls	\$15,000.00	2023
3.	Roof: Fix roof rafters detaching. Fix garage roof sagging. Fix kitchen plumbing and broken tile	\$5,000	2024
4.	Electrical: Rewire home and garage. Remove knob and tube wiring. Update electrical box.	\$15,000	2024
5.	Continue Electrical work from 2024	\$15,000	2025
6.	Replace non-historic window in rear elevation with appropriate wood window per Historic Preservation Design Standards. Restore historic hardware.	\$4,000	2025
7.	Foundation: Reinforce sagging weak floors. Add additional foundation and flooring support.	\$20,000.00	2026
8.	Repair and restore historic wooden glass in windows and screens in conformance with the Historic Preservation Design Standards. Consulting with Historic Preservation Planning staff if needed to replace.	\$5,000	2027
9.	Consult with a Historic Preservation consultant/specialist for damage to rafter tails.	\$2,500	2027
10.	HVAC: Add central air and heat to home	\$20,000	2028
11.	Repair and reinforce cracks ceilings	\$5,000	2029
12.	Repair historic porch beams and restore/repair original porch material.	\$5,000	2029
13.	Tent for termites	\$5,000	2030
14.	Roof: replace roof	\$25,000	2031

15.	Paint exterior house	\$15,000	2032
TOTAL		<b>\$158,500</b>	

**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # 30-159468

HRI # 038834

Trinomial ORA

NRHP Status Code 1D

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

MAPLE\_E\_405\_\_APN\_039-244-10

P1. Other Identifier:

\*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 1/4 of Sec ; B.M.

c. Address: 405 - E MAPLE AVE, # City: Orange Zip: 92866

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: Frame - Wood siding

A single-story bungalow with rectangular plan, wide lap siding and a single-gable roof with side-facing gables. The centermost portion of the front facade features an extension of the roof which culminates in an entry porch overhang supported by slim wood posts. Main entry is beneath at center and is flanked on either side by side lites.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☒ Element of District ☐ District ☐ Other (Isolates, etc.)

P5b. Description of Photo: 2005

(View, date, accession #)



\*P6. Date Constructed/ Age and Source:

1915 c

☒ Historic ☐ Prehistoric ☐ Both

\*P7. Owner and Address:

\*P8: Recorded by: (Name, affiliation, and address)

D. Gest, P. LaValley, D.  
Matsumoto

Chattel Architecture

13417 Ventura Blvd.

Sherman Oaks, CA 91423

\*P9. Date Recorded:

March, 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey. AEGIS (1991) Historic Building Inventory  
Update. Heritage Orange County, Inc. (1982) Orange Historic Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary # 30-159468  
HRI # 038834  
\*NRHP Status Code 1D

Page 2 of 3

\*Resource Name or #: MAPLE\_E\_405\_\_APN\_039-244-10  
(Assigned by Recorder)

B1. Historic Name: Unknown

B2. Common Name:

B3. Original Use: RES B4. Present Use: RES

\*B5. Architectural Style: Bungalow

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1915 c ☒ Historic ☐ Prehistoric ☐ Both

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Unknown

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Old Towne: Early Settlement (c. 1870 - 1920) Applicable Criteria: AC

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Excellent Condition - No apparent change to original structure.

Site Integrity:

Opportunities:

B11. Additional Resource Attributes: (List attributes and codes)

\*B12. References:

Orange Daily News.

B13. Remarks: (Continues on Pg.3.)

Status change since 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 # 30-159468  
HRI # 038834  
Trinomial ORA

Page 3 of 3

\*Resource Name or #:  
(Assigned by Recorder)

MAPLE\_E\_405\_\_APN\_039-244-10

Recorded by:

D. Gest, P. LaValley, D. Matsumoto  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: March, 2005

☒ Continuation ☐ Update

Years Surveyed: 1982, 1991, 2005

Listed in National Register: 1997

General Plan: LDR # of Buildings: 1

Planning Zone: R-1-6 # of Stories: 2

Lot Acre: 0.1746 # of Units: 1

Principal Building Sqft: 1124

B6. Construction History (Continued from Pg.2):

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):

Description of Photo: 1991







12 01 2022

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

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Property Address: 605 S. Woodland Street  
APN: 094-451-07  
Mills Act Contract Number 422.0-22

### **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 Sharon E. O’Connell, a widow (“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 605 S. Woodland Street in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 094-451-07 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Shaon E. O'Connell  
605 S. Woodland Street  
Orange, CA 92869

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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Sharon E. O’Connell

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**N-TRACT: 3545 BLOCK: LOT: 53.**

**[APN 094-451-07]**

## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**605 S Woodland Street**

Priority	Description of Work	Cost Estimate	Completion Date
1.	Replace roof	\$36,000.00	2022
2.	Replace downspouts	\$591.00	2022
3.	Remove existing exterior storage closet	\$1,500.00	2023
4.	Limited replacement of exterior plywood cladding	\$10,000.00	2023
5.	Prepare/prime/repaint exterior	\$9,000.00	2024
6.	Repair electrical outlets in interior	\$500.00	2024
7.	Repair or replace existing plywood siding at north atrium wall in-kind	\$4,000.00	2025
<b>TOTAL</b>		<b>\$61,591.00</b>	



**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary #

HRI #

Trinomial

NRHP Status Code

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

WOODLAND\_S\_605\_\_APN\_094-451-07

P1. Other Identifier: Fairhaven Tract

\*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 1/4 of Sec ; B.M.

c. Address: 605 - S WOODLAND ST , # City: Orange Zip: 92869

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials:

Model LJ-144

\*P3b. Resource Attributes: (HP2)--Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ Element 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

City of Orange  
300 E. Chapman Ave.  
City of Orange, CA 92866

\*P9. Date Recorded:

June 2015

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary #

HRI #

\*NRHP Status Code 5B

Page 2 of 3

\*Resource Name or #:  
(Assigned by Recorder)

WOODLAND\_S\_605\_\_APN\_094-451-07

B1. Historic Name: Unknown

B2. Common Name: \_\_\_\_\_

B3. Original Use: RES

B4. Present Use: RES

\*B5. Architectural Style: Mid-Century Modern

\*B6. Construction History: (Construction date, alterations, and date of alterations) 1960 ☐ Historic ☐ Prehistoric ☐ Both  
Front door replaced.

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: \_\_\_\_\_ Original Location: \_\_\_\_\_

\*B8. Related Features: \_\_\_\_\_

\*B9. Architect or Builder: Eichler Homes - A. Quincy Jones

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Eichler Tract (c. 1959 - 1965) Applicable Criteria: CG

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Excellent Condition - Low level of alteration as of 2005.

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.

B13. Remarks: (Continues on Pg.3.)

Status change since 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 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

\*Resource Name or #:  
(Assigned by Recorder)

WOODLAND\_S\_605\_\_APN\_094-451-07

Recorded by:

Marissa Moshier, Historic Preservation Planner  
City of Orange  
300 E. Chapman Ave.  
City of Orange, CA 92866

Date Recorded: June 2015

☒ Continuation ☐ Update

Years Surveyed: 2005, 2015

Description of Photo: 1991

Listed in National Register:

General Plan: LDR # of Buildings: \_\_\_\_\_

Planning Zone: R-1-8 # of Stories: 1

Lot Acre: 0.2636 # of Units: \_\_\_\_\_

Principal Building Sqft: 1774

B6. Construction History (Continued from 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

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Property Address: 552 S. Woodland Street  
APN: 094-452-0  
Mills Act Contract Number: 423.0-22

### **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 MARISCAL and KIMBERLY MARISCAL, as husband and wife, and KEVIN HEUER and LYNNE HEUER, husband and wife, all 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 552 S. Woodland Street in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 094-452-05 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Daniel and Kimberly Mariscal, Kevin and  
Lynne Heuer

552 S. Woodland Street  
Orange, CA 92869

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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Daniel Mariscal

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Kimberly Mariscal

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Kevin Heuer

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Lynne Heuer

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Lot 63 of Tract 3545, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 125, page(s) 1 through 5, inclusive of miscellaneous maps, in the office of the County Recorder of Said County.**

**[APN 094-452-05]**



## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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

#### 552 S Woodland Street

Priority	Description of Work	Cost Estimate	Completion Date
1.	Fill cracks in paint of interior posts	400.00	2022
2.	Install mini split	22,000.00	2022
3.	Paint exterior	8,500.00	2022
4.	Plumbing repair and maintenance in bathrooms	4,500.00	2022
5.	Repair gas kitchen	1,200.00	2022
6.	Repair gas service to fireplace	450.00	2022
7.	Repair roof	3,200.00	2022
8.	Repair termite damage per report	8,000.00	2022
9.	Roof maintenance	3,200.00	2022
10.	Service sliding doors	1,400.00	2022
11.	Termite treatment	550.00	2022
12.	Plumbing repair and maintenance in kitchen	3,600.00	2024
13.	Replace glazing in bathroom	400.00	2024
14.	Clean main sewer	1,800.00	2025
15.	Purchase and install reproduction Eichler house numbers	100.00	2025
16.	Install UV film to glazing in accordance with the Orange Eichler Design Standards	6,500.00	2026
17.	Remove non-original window and patch wall	3,500.00	2026
18.	Repair scratches to glass doors	600.00	2026
19.	Replace door at north façade	1,200.00	2026
20.	Remove stone applied to fireplace per the Orange Eichler Design Standards to original appearance	1,200.00	2028
21.	Repair garage door locks	2,800.00	2028
22.	Repair hardware for skylights	900.00	2029
23.	Remove flagstone paving from entry and restore atrium paving	14,000.00	2030
24.	Replace entry door per Orange Eichler Design Standards to historically appropriate door	5,000.00	2030
25.	Replace existing entry walkway per Orange Eichler Design Standards	8,000.00	2030
26.	Restore exterior finish of sliding doors	4,500.00	2030
<b>TOTAL</b>		<b>114,000.00</b>	

**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # \_\_\_\_\_

HRI # \_\_\_\_\_

Trinomial ORA

NRHP Status Code 5B

Other Listings: \_\_\_\_\_

Review Code: \_\_\_\_\_

Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

WOODLAND\_S\_552\_\_APN\_094-452-05

P1. Other Identifier: Fairhaven Tract

\*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 \_\_\_\_\_ 1/4 of Sec \_\_\_\_\_; \_\_\_\_\_ B.M.

c. Address: 552 - S. WOODLAND ST, # \_\_\_\_\_ City: Orange Zip: 92869

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: \_\_\_\_\_

Model LA-91

\*P3b. Resource Attributes: (HP2)--Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ Element 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)  
D. Gest, P. LaValley

Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

\*P9. Date Recorded:

January 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey.

\*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): \_\_\_\_\_

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary #

HRI #

\*NRHP Status Code 5B

Page 2 of 3

\*Resource Name or #:  
(Assigned by Recorder)

WOODLAND\_S\_552\_\_APN\_094-452-05

B1. Historic Name: Unknown

B2. Common Name: \_\_\_\_\_

B3. Original Use: RES

B4. Present Use: RES

\*B5. Architectural Style: Mid-Century Modern

\*B6. Construction History: (Construction date, alterations, and date of alterations) 1960 ☐ Historic ☐ Prehistoric ☐ Both  
Front door replaced.

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: \_\_\_\_\_ Original Location: \_\_\_\_\_

\*B8. Related Features: \_\_\_\_\_

\*B9. Architect or Builder: Eichler Homes - Anshen & Allen

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Eichler Tract (c. 1959 - 1965) Applicable Criteria: CG

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Excellent Condition - Low level of alteration as of 2005.

Site Integrity: \_\_\_\_\_

Opportunities \_\_\_\_\_

B11. Additional Resource Attributes: (List attributes and codes) \_\_\_\_\_

\*B12. References:

Orange Daily News.

B13. Remarks: (Continues on Pg.3.)

Status change since 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 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

\*Resource Name or #:  
(Assigned by Recorder)

WOODLAND\_S\_552\_\_APN\_094-452-05

Recorded by:

D. Gest, P. LaValley  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: January 2005

☒ Continuation

☐ Update

Years Surveyed: 2005

Description of Photo: 1991

Listed in National Register:

General Plan:

LDR

# of Buildings:

Planning Zone:

R-1-8

# of Stories:

1

Lot Acre:

0.1961

# of Units:

Principal Building Sqft:

1729

B6. Construction History (Continued from 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

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Property Address: 825 E. Ferndale Avenue  
APN: 374-222-11  
Mills Act Contract Number: 424.0-22

### **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 BALDASARI and ANNABELLE BALDASARI, as husband and wife 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 825 E. Ferndale Avenue in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 374-222-11 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Ryan Baldasari and Annabelle Baldasari  
825 E. Ferndale Avenue  
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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Ryan Baldasari

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Annabelle Baldasari

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Lot 85 of Tract No. 3978, as per Map recorded in Book 140, Pages 17 to 19, inclusive, of Miscellaneous Maps, in the office of the Recorder of Said County.**

**[APN 374-222-11]**

## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**825 E Ferndale Avenue**

Priority	Description of Work	Cost Estimate	Completion Date
	Remove boiler	\$450.00	2023
1.	Replace deteriorate siding will in-kind Eichler siding only when necessary, per the Orange Eichler Design Standards. Prime, paint, add insulation.	\$43,000.00	2024
2.	Retrofit walls	\$1,000.00	2024
3.	Replace exterior hose bibs	\$1,000.00	2024
4.	Replace downspouts and leader heads, add new gutters, may need to extend roof	\$5,500.00	2024
5.	Maintenance for termite treatment and repair	\$3,000.00	2024
<b>TOTAL</b>		<b>\$53,950.00</b>	



**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary #

HRI #

Trinomial

NRHP Status Code

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

FERNDAL E 825 APN 374-222-11

P1. Other Identifier: Fairmeadow Tract

\*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 1/4 of Sec ; B.M.

c. Address: 825 - E FERNDAL AVE , # City: Orange Zip: 92865

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials:

Model Unknown. Similar to OJ-04 in Fairhills Tract.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ Element of District ☐ District ☐ Other (Isolates, etc.)



P5b. Description of Photo: 2014  
(View, date, accession #)

\*P6. Date Constructed/ Age and Source:

1964 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

\*P9. Date Recorded:

January 2016

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary #

HRI #

\*NRHP Status Code 3D

Page 2 of 3

\*Resource Name or #:  
(Assigned by Recorder)

FERNDAL E\_825 APN\_374-222-11

B1. Historic Name: Unknown

B2. Common Name:

B3. Original Use: RES

B4. Present Use: RES

\*B5. Architectural Style: Mid-Century Modern

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1964 ☐ Historic ☐ Prehistoric ☐ Both

Large, flat roof addition on east elevation with large, aluminum slider window; garage doors replaced and bays altered; windows in gable end altered with slider sash; front walk repaved.

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Eichler Homes - Claude Oakland

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Eichler Tract (c. 1959 - 1965) Applicable Criteria: C

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Good Condition - High level of alteration as of 2005.

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.

B13. Remarks: (Continues on Pg.3.)

Status change since 1991 Survey: Not previously surveyed.

(Sketch Map with North arrow required.)

\*B14. Evaluator: Marissa Moshier, City of Orange

\*Date of Evaluation: January 2016

(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

\*Resource Name or #:  
(Assigned by Recorder)

FERNDAL E\_825\_\_APN\_374-222-11

Recorded by:

Marissa Moshier, Historic Preservation Planner  
City of Orange  
300 E. Chapman Ave.  
Orange, CA 92866

Date Recorded: January 2016

☒ Continuation ☐ Update

Years Surveyed: 2005, 2015

Description of Photo: 2005

Listed in National Register:

General Plan: LDR # of Buildings: 1

Planning Zone: R-1-8 # of Stories: 1

Lot Acre: 0.1786 # of Units: 1

Principal Building Sqft: 2139

B6. Construction History (Continued from 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

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Property Address: 421 S. Orange Street  
APN: 390-412-03  
Mills Act Contract Number: 425.0-22

### **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 KATIE ELLEN MONTGOMERY and MICHAEL CHRISTIAN MONTGOMERY, as Trustees of the Montgomery Family Trust (“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 421 S. Orange Street in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 390-412-03 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Katie and Michael Montgomery  
421 S. Orange 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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Katie Ellen Montgomery

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Michael Christian Montgomery

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Lot 22, Resubdivision of Block “A,” Grand Avenue Addition to Orange, County of Orange, State of California, As per Map Recorded in Book 2, Page 21 of Miscellaneous Maps, in the Office of the County Recorder of Said County.**

**[APN 390-412-03]**



## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY** **MAINTENANCE STANDARDS**

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**

**421 S. Orange Avenue**

Priority	Description of Work	Cost Estimate	Completion Date
1.	Engage a structural engineer experienced in historic preservation to evaluate the foundation and structure, and make recommendations for repair and retrofit	\$2,500.00	2023
2.	Earthquake retrofit	\$5,000.00	2023
3.	Structural support beams in garage per the Historic Preservation Design Standards	\$20,000.00	2026
4.	Repair windows in accordance to the Historic Preservation Design Standards	\$2,000.00	2028
5.	Repaint exterior	\$8,000.00	2029
6.	Plumbing	\$15,000.00	2031
<b>TOTAL</b>		<b>\$52,500.00</b>	

**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # 30-159109

HRI # 038475

Trinomial ORA

NRHP Status Code 1D

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

ORANGE\_S\_421\_\_APN\_390-412-03

P1. Other Identifier:

\*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 1/4 of Sec ; B.M.

c. Address: 421 - S ORANGE ST , # City: Orange Zip: 92866

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: Frame - Wood siding

A single-story bungalow with lap siding and double, front-facing gables. A small entry porch is formed in one corner portion of the forwardmost gable.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☒ Element of District ☐ District ☐ Other (Isolates, etc.)



P5b. Description of Photo: 2005  
(View, date, accession #)

\*P6. Date Constructed/ Age and Source:

1914

☒ Historic ☐ Prehistoric ☐ Both

\*P7. Owner and Address:

\*P8: Recorded by: (Name, affiliation, and address)  
D. Gest, P. LaValley, D.  
Matsumoto

Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

\*P9. Date Recorded:

April, 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey. AEGIS (1991) Historic Building Inventory  
Update. Heritage Orange County, Inc. (1982) Orange Historic Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary # 30-159109  
HRI # 038475  
\*NRHP Status Code 1D

Page 2 of 3

\*Resource Name or #: ORANGE\_S\_421\_\_APN\_390-412-03  
(Assigned by Recorder)

B1. Historic Name: Unknown

B2. Common Name:

B3. Original Use: RES

B4. Present Use: RES

\*B5. Architectural Style: Craftsman Bungalow

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1914 ☒ Historic ☐ Prehistoric ☐ Both

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Unknown

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Old Towne: Early Settlement (c. 1870 - 1920) Applicable Criteria: AC

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Good Condition - No apparent change to original structure.

Site Integrity:

Opportunities:

B11. Additional Resource Attributes: (List attributes and codes)

\*B12. References:

Orange Daily News.

B13. Remarks: (Continues on Pg.3.)

Status change since 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 # 30-159109  
HRI # 038475  
Trinomial ORA

Page 3 of 3

\*Resource Name or #:  
(Assigned by Recorder)

ORANGE\_S\_421\_\_APN\_390-412-03

Recorded by:

D. Gest, P. LaValley, D. Matsumoto  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: April, 2005

☒ Continuation ☐ Update

Years Surveyed: 1982, 1991, 2005

Description of Photo: 1991

Listed in National Register: 1997

General Plan: LDR # of Buildings: 1

Planning Zone: R-2-6 # of Stories: 1

Lot Acre: 0.1399 # of Units: 1

Principal Building Sqft: 1246

B6. Construction History (Continued from 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

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Property Address: 3730 E. Kirkwood Avenue  
APN: 094-462-20  
Mills Act Contract Number: 426.0-22

### **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 TREVOR ALAN PEREA and BLYTH MARIE PEREA, as husband and wife as community 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 3730 E. Kirkwood Avenue in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 094-462-20 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Trevor Alan and Blyth Marie Perea  
3730 E. Kirkwood Avenue  
Orange, CA 92869

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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Trevor Alan Perea

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Blyth Marie Perea

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Lot 95 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 to 5, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County.**

**[APN 094-462-20]**

## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**3730 E Kirkwood Avenue**

Priority	Description of Work	Cost Estimate	Completion Date
1.	Plumbing lines and sewer cleanout	\$15,000.00	2023
2.	Repair termite/wood damage per the Orange Eichler Design Standards	\$2,995.00	2024
3.	Replace HVAC	\$7,500.00	2025
4.	Repaint/repair exterior façade per the Orange Eichler Design Standards	\$20,000.00	2027
5.	Electrical work	\$5,000.00	2028
6.	Repair roofing in accordance to the Orange Eichler Design Standards	\$45,000.00	2032
<b>TOTAL</b>		<b>\$95,495.00</b>	



**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary #

HRI #

Trinomial

NRHP Status Code

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:

(Assigned by Recorder)

KIRKWOOD\_E\_3730\_\_APN\_094-462-20

P1. Other Identifier: Fairhaven Tract

\*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 1/4 of Sec ; B.M.

c. Address: 3730 - E KIRKWOOD AVE, # City: Orange Zip: 92869

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials:

Model LA-91R

\*P3b. Resource Attributes: (HP2)--Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☐ Element 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

City of Orange

300 E. Chapman Ave.

Orange, CA 92866

\*P9. Date Recorded:

June 2015

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey.

\*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):

DPR 523A (1/95)

\*Required Information



State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary #

HRI #

\*NRHP Status Code 3D

Page 2 of 3

\*Resource Name or #:  
(Assigned by Recorder)

KIRKWOOD\_E\_3730\_\_APN\_094-462-20

B1. Historic Name: Unknown

B2. Common Name: \_\_\_\_\_

B3. Original Use: RES

B4. Present Use: RES

\*B5. Architectural Style: Mid-Century Modern

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1960 ☐ Historic ☐ Prehistoric ☐ Both  
Front door replaced; front walk and driveway repaved. In 2014, 150 sf addition to master (#1308-226).

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: \_\_\_\_\_ Original Location: \_\_\_\_\_

\*B8. Related Features: \_\_\_\_\_

\*B9. Architect or Builder: Eichler Homes - Anshen & Allen

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Eichler Tract (c. 1959 - 1965)

Applicable Criteria: C

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Excellent Condition - Low level of alteration as of 2005.

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.

B13. Remarks: (Continues on Pg.3.)

Status change since 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 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

\*Resource Name or #:  
(Assigned by Recorder)

KIRKWOOD\_E\_3730\_\_APN\_094-462-20

Recorded by:

Marissa Moshier, Historic Preservation Planner  
City of Orange  
300 E. Chapman Ave.  
Orange, CA 92866

Date Recorded: June 2015

☒ Continuation

☐ Update

Years Surveyed:

2005, 2015

Description of Photo:

Listed in National Register:

General Plan:

LDR

# of Buildings:

1

Planning Zone:

R-1-8

# of Stories:

1

Lot Acre:

0.1957

# of Units:

1

Principal Building Sqft:

2583

B6. Construction History (Continued from 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: 322 E. Palmyra Avenue  
APN: 390-403-22  
Mills Act Contract Number: 427.0-22

### **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 HEATHER CHRISTINE JOHNSON, A SINGLE WOMAN, and ANDREW SCOTT MOREY, A SINGLE MAN, 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 322 E. Palmyra Avenue in the City of Orange, County of Orange, State of California, having Assessor’s Parcel Number 390-403-22 and more specifically described in Exhibit A, 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 Exhibit D within the times established therefore in Exhibit D. 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 Exhibit D 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 Exhibit D 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 December 13, 2022 to and including December 13, 2032.
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

Andrew Morey and Heather Johnson  
322 E. Palmyra 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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Heather Christine Johnson

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Andrew Scott Morey

“CITY”

CITY OF ORANGE, a municipal corporation

Dated: \_\_\_\_\_, 2022

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)

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF HISTORIC PROPERTY**

**REAL PROPERTY IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS:**

**Parcel 1:**

**Lot 12 of Block “A” of George Achison’s Subdivision of Richland Farms Lots 41 and 42, City of Orange, County of Orange, State of California, as shown on a Map recorded in Book 3, Page 49 of Miscellaneous Maps, records of said County.**

**Parcel 2:**

**A right of way over the West 5 feet 2 inches of the North 97 feet 8 inches of Lot 13 in Block A of George Achison’s subdivision as shown on a map recorded in Book 3, Page 49 of Miscellaneous Maps, records of Said County.**

**[APN 390-403-22]**



## **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”**

### **CITY OF ORANGE HISTORIC PROPERTY MAINTENANCE STANDARDS**

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**

**322 E. Palmyra Avenue**

Priority	Description of Work	Cost Estimate	Completion Date
1.	Rehabilitate wood window glazing, sash, and trim	\$6,500.00	2023
2.	Paint exterior	\$11,500.00	2024
3.	Replace floor with hardwood more compatible with the historic character per the Historic Preservation Design Standards	\$14,500.00	2025
4.	Engage structural engineer experienced in historic preservation to evaluate the foundation, structure and chimney, and make recommendations for repair and retrofit	\$26,000.00	2026
5.	Replace AC/heat coil	\$14,000.00	2027
6.	Level back porch to original per the Historic Preservation Design Standards	\$6,000.00	2028
7.	Remove and refinish paint on front porch	\$4,500.00	2028
8.	Implementation of termite report recommendations	\$5,295.00	2029
9.	Engage contractor to evaluate the sewer lines and make recommendations for repair and rehabilitation	\$1,500.00	2030
10	Reseal roof vents and projections	\$2,500.00	2032
<b>TOTAL</b>		<b>\$92,295.00</b>	

**EXHIBIT “E”**

**HISTORIC PROPERTY INVENTORY FORM (DPR 523)**

[Attached.]

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
PRIMARY RECORD

Primary # 30-159137, 30-161822

HRI # 038503, 066146

Trinomial ORA

NRHP Status Code 1D

Other Listings:

Review Code:

Reviewer:

Date:

Page 1 of 3

\*Resource Name or #:  
(Assigned by Recorder)

PALMYRA\_E\_322\_\_APN\_390-403-22

P1. Other Identifier:

\*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 1/4 of Sec ; B.M.

c. Address: 322 - E PALMYRA AVE, # City: Orange Zip: 92866

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. Include design, materials, condition, alterations, size, setting, and boundaries. Continues on Pg.3.)

Materials: Frame - Wood siding

A single-story clapboard house with hip roof and small hip dormer on the front portion of the roof. Main entry is via a corner recessed porch supported by Classical columns with Corinthian capitals.

\*P3b. Resource Attributes: (HP2) --Single family property  
(List attributes and codes)

\*P4. Resources Present: ☒ Building ☐ Structure ☐ Object ☐ Site ☒ Element of District ☐ District ☐ Other (Isolates, etc.)



P5b. Description of Photo: 2005  
(View, date, accession #)

\*P6. Date Constructed/ Age and Source:

1903

☒ Historic ☐ Prehistoric ☐ Both

\*P7. Owner and Address:

\*P8: Recorded by: (Name, affiliation, and address)  
D. Gest, P. LaValley, D.  
Matsumoto

Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

\*P9. Date Recorded:

April, 2005

\*P10. Survey Type: (Describe)

Reconnaissance

\*P11. Report Citation: (Cite survey report and other sources, or enter "none.")

Orange County Assessor Records (2005). Chattel Architecture (2005)  
Historic Resources Survey. AEGIS (1991) Historic Building Inventory  
Update. Heritage Orange County, Inc. (1982) Orange Historic Survey.

\*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):

DPR 523A (1/95)

\*Required Information

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
BUILDING, STRUCTURE, AND OBJECT RECORD

Primary # 30-159137, 30-161822  
HRI # 038503, 066146  
\*NRHP Status Code 1D

Page 2 of 3

\*Resource Name or #: PALMYRA\_E\_322\_\_APN\_390-403-22  
(Assigned by Recorder)

B1. Historic Name: Noah and Minnie Potter House (1907)

B2. Common Name:

B3. Original Use: RES B4. Present Use: RES

\*B5. Architectural Style: Hip Roof Cottage

\*B6. Construction History: (Construction date, alterations, and date of alterations) Date of Construction: 1903 ☒ Historic ☐ Prehistoric ☐ Both

\*B7. Moved? ☒ No ☐ Yes ☐ Unknown Date: Original Location:

\*B8. Related Features:

\*B9. Architect or Builder: Unknown

\*B10. Significance: Theme: Architecture Area: City of Orange Property Type: Residence

Period of Significance: Old Towne: Early Settlement (c. 1870 - 1920) Applicable Criteria: AC

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity. Continues on Pg.4.)

Structural Integrity: Excellent Condition - No apparent change to original structure.

Site Integrity:

Opportunities:

As of 1907, the house was owned by Noah V. and Minnie Potter. Mr. Potter was a local contractor and builder.

B11. Additional Resource Attributes: (List attributes and codes)

\*B12. References:

Orange Daily News.

B13. Remarks: (Continues on Pg.3.)

Status change since 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 # 30-159137, 30-161822  
HRI # 038503, 066146  
Trinomial ORA

Page 3 of 3

\*Resource Name or #:  
(Assigned by Recorder)

PALMYRA\_E\_322\_\_APN\_390-403-22

Recorded by:

D. Gest, P. LaValley, D. Matsumoto  
Chattel Architecture  
13417 Ventura Blvd.  
Sherman Oaks, CA 91423

Date Recorded: April, 2005

☒ Continuation ☐ Update

Years Surveyed: 1982, 1991, 2005

Listed in National Register: 1995, 1996, 1997

General Plan: LDR # of Buildings: 1

Planning Zone: R-2-6 # of Stories: 1

Lot Acre: 0.1474 # of Units: 1

Principal Building Sqft: 1275

Description of Photo: 1991

B6. Construction History (Continued from Pg.2):

B13. Remarks (Continued from Pg.2):

P3a. Description (Continued from Pg.1):







322

Re-Elect Mark A.  
**MURPHY**  
Mayor of Orange



# Agenda Item

## City Council

Item #: 3.6.

12/13/2022

File #: 22-0689

**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Christopher Cash, Public Works Director

### 1. SUBJECT

Appropriation of \$530,000 in Comprehensive Transportation Funding Programs - Project X Tier 1 2022 Environmental Cleanup Program fund and Sanitation and Sewer fund for the Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.

### 2. SUMMARY

The Orange County Transportation Authority (OCTA) approved the allocation of Tier 1 Environmental Cleanup Program funding and has pre-awarded the City of Orange \$400,000 for the Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project. The City intends to use this funding to install a hydrodynamic separator on Taft Avenue and Connector Pipe Screens on Taft Avenue and Lewis Street.

### 3. RECOMMENDED ACTION

1. Accept into the City's revenue budget \$400,000 in grant funds from the OCTA Tier 1 Environmental Cleanup Program, into revenue account number 550.5011.45460.30215, Reimbursable Capital Projects - Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.
2. Authorize the appropriation of \$400,000 to expenditure account number 550.5011.56340.30215, Reimbursable Capital Projects - Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.
3. Authorize the appropriation of \$130,000 to expenditure account number 220.5011.56340.30215, Sanitation and Sewer - Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project.

### 4. FISCAL IMPACT

The total expenditure for this project is \$530,000 and will be funded in "Taft Avenue & Lewis Street Water Quality Storm Drain Improvement Project" (30215) through:

Sanitation and Sewer (220)	\$130,000
Reimbursable Capital Projects (550)	<u>400,000</u>
Total:	\$530,000

### 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 City of Orange Public Works Department applied for and received funds through Environmental Cleanup Tier 1 Grant Program managed by the Orange County Transportation Authority (OCTA). This program is a competitive grant program within Orange County that makes funds available to soliciting cities to help protect Orange County beaches and waterways from transportation-generated pollution and improve overall water quality. The City has been awarded \$400,000 for installing a hydrodynamic separator on Taft Avenue and Connector Pipe Screens on Taft Avenue and Lewis Street.

The project collects drainage from a total of 354 acres composed of commercial, bus stop locations, light manufacturing, industrial manufacturing, multi-family homes, and single-family home sections of Orange. These areas combine to generate potentially significant amounts of leaves, trash and other debris. The City has looked at various options to control trash and debris. Through the Orange Municipal Code, the City can enforce sections related to littering and nuisances and its weekly street sweeping program picks up a large amount of trash and debris. However, anything not collected by the street sweepers has the potential to enter the storm drain system and impact the downstream water bodies. The proposed Debris Separating Baffle Box (DSBB) is a Continuous Deflection Separator (CDS) unit, and helps address this deficiency by capturing trash and debris and other gross pollutants via its trash screens, sediment chambers, and the use of an oil skimmer and hydrocarbon boom filters. The DSBB will be placed on Taft Avenue just east of the Taft Avenue/O'Donnell Way intersection. The proposed connector pipe screen (CPS) units also help solve this deficiency by capturing trash and debris and other pollutants within each catch basin. The CPS will be installed in seven (7) catch basins on Taft Avenue, and Lewis Street.

The total project cost is estimated at \$530,000, including 5% for design, 5% for construction engineering and 10% for contingency.

Construction is scheduled to begin in March 2023 and is expected to be completed by September 2023.

## 7. ATTACHMENTS

- OCTA ECP Project X Tier 1 2022 Programming Recommendations





# Agenda Item

## City Council

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12/13/2022

File #: 22-0689

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**THRU:** Tom Kisela, Interim City Manager

**FROM:** Christopher Cash, Public Works Director

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## 7. ATTACHMENTS

- OCTA ECP Project X Tier 1 2022 Programming Recommendations



## COMMITTEE TRANSMITTAL

**November 14, 2022**

**To:** Members of the Board of Directors

**From:** Andrea West, Interim Clerk of the Board

**Subject:** Comprehensive Transportation Funding Programs - Project X Tier 1 2022 Call for Projects Programming Recommendations

Regional Planning and Highways Committee Meeting of November 7, 2022

**Present:** Directors Bartlett, Chaffee, Delgleize, Harper, Muller, and Murphy

**Absent:** Director Foley

**Committee Vote**

This item was passed by the Members present.

Directors Delgleize and Foley were not present to vote on this item.


**Committee Recommendations**

- A. Approve the allocation of \$3,120,217 in Tier 1 Environmental Cleanup Program funding for 13 projects.
- B. Grant pre-award authority for this cycle of awarded projects to enable local jurisdictions to meet the timely use of funds requirements.



**November 7, 2022**

**To:** Regional Planning and Highways Committee

**From:** Darrell E. Johnson, Chief Executive Officer 

**Subject:** Comprehensive Transportation Funding Programs – Project X  
Tier 1 2022 Call for Projects Programming Recommendations

### **Overview**

The Orange County Transportation Authority's Environmental Cleanup Program provides Measure M2 funding for water quality improvement projects to address transportation-generated pollution. The fiscal year 2022-23 Tier 1 Grant Program call for projects was issued on March 14, 2022. Evaluations of grant applications are complete, and a list of projects recommended for funding is presented for Board of Directors' review and approval.

### **Recommendations**

- A. Approve the allocation of \$3,120,217 in Tier 1 Environmental Cleanup Program funding for 13 projects.
- B. Grant pre-award authority for this cycle of awarded projects to enable local jurisdictions to meet the timely use of funds requirements.

### **Background**

In May 2010, the Orange County Transportation Authority (OCTA) Board of Directors (Board) approved a two-tiered approach to fund the Measure M2 (M2) Project X Environmental Cleanup Program (ECP). The Tier 1 Grant Program is designed to reduce more visible forms of pollutants, such as litter and debris collecting on roadways and in catch basins prior to being deposited in waterways and, ultimately, the ocean. The Tier 2 Grant Program provides funding for larger projects, allowing for multi-jurisdictional, capital-intensive structural treatment Best Management Practice (BMP) projects.

Tier 1 funds are available for Orange County local jurisdictions to purchase and install equipment and other BMPs that supplement, not supplant, existing water quality programs. Examples include screens, filters, and inserts for catch basins,

as well as other devices designed to remove the aforementioned pollutants. Projects must demonstrate a direct nexus to the reduction of transportation-related pollution, as developed and defined by OCTA's Environmental Cleanup Allocation Committee (ECAC).

To date, the Board has approved funding for 199 Tier 1 projects, totaling approximately \$30 million. It is estimated that more than 45 million gallons of trash have been captured since the inception of the ECP in 2011. Over time, the volume of trash captured is expected to increase. On March 14, 2022, the Board approved the issuance of the current 2022 ECP Tier 1 call for projects (call), making available approximately \$3 million to support a 12th call for the ECP Tier 1 program.

### ***Discussion***

The ECP Tier 1 call application deadline was June 16, 2022. As of that date, 14 applications were submitted to OCTA from 14 local jurisdictions. However, one application was withdrawn during the evaluation process. The 13 remaining applications were reviewed and evaluated by an application review committee consisting of OCTA staff and the ECAC Chairman. Project applications were evaluated based on Board-approved selection criteria, which include the following:

- Effectiveness at removing trash and debris;
- Cost/benefit analyses;
- Pollution reducing benefits;
- Project readiness;
- Adequacy of proposed operations and maintenance plans; and
- Submission of clear and detailed work plans with specific implementation timing documented

On October 6, 2022, the ECAC met and concurred with the application review committee's conclusions and recommended that 13 projects in the amount of \$3,120,217 be considered by the Board for funding (Attachment A). While the recommended award amount is higher than the Board-authorized target of \$3 million, the funding recommendation aligns with award recommendations from previous cycles, which may be slightly below or above the Board-authorized target. It should also be noted that funding in excess of call target amounts is offset by previous ECP Tier 1 unallocated call balances, including approximately \$102,000 from the 2021 call.



The projects being recommended for funding consist of catch basin debris screen devices, including 1,508 connector pipe screens (CPS), 288 automatic retractable screens (ARS), 170 grated inlet trash screens (GITS), one debris separating baffle box (DSBB), and one in-line trash trap unit.

More detailed project descriptions and visual examples are provided in Attachment B and Attachment C, respectively. A brief overview of these project types is provided below.

- Catch basin debris screen devices: These metal screen devices cover catch basins and prevent debris from entering the storm drain system and primarily consist of CPS, ARS, and GITS type devices.
- A DSBB is an advanced stormwater treatment system utilizing a non-clogging screen technology and hydrodynamic separation to capture pollutants. The non-clogging screening system stores trash and debris in a dry state, suspended above sedimentation chambers that allows for easier maintenance.
- An in-line trash trap unit is a precast concrete structure designed to reduce pollutants present in stormwater and urban runoff by capturing trash and solids from incoming flows using disposable mesh nets. The design of the trash trap unit effectively uses the energy of water flow to drive pollutants into nets to separate and capture trash, debris, and sediment. All particles larger than one millimeter are captured. Oil absorption material can be placed inside or outside the nets to absorb oil sheen and grease.

As part of this program, local jurisdictions agree to contribute a minimum match of 20 percent of total project costs. All recommended projects meet this requirement.

Upon approval from the Board, OCTA will execute letter agreements with each awarded local jurisdiction. Construction contracts are required to be awarded by the local jurisdiction within 12 months of the letter agreement and may not be executed before the letter agreement is finalized. However, due to extenuating circumstances in securing application review committee participants this call, it has taken longer than in previous cycles to advance the project funding recommendations to the Board for approval. Therefore, to hold local jurisdictions harmless for the reduced time to meet the construction contract requirement (i.e., 12 months from execution of letter agreements), staff is recommending that pre-award authority be granted upon Board approval for the 13 projects. Pre-award authority allows local jurisdictions to enter into construction contracts ahead of execution of letter agreements, which can take several months after Board approval for final execution by cities and OCTA.

Staff continues to engage the ECAC for the recruitment of additional application review committee members for future Tier 1 call evaluations to mitigate potential delays in the future.

#### **Next Steps**

Upon Board approval and once funding awards are finalized, local jurisdictions will be required to execute a letter amendment to their M2 master agreement. As noted above, recommended pre-award authority will help local jurisdictions avoid any delays in project delivery. OCTA will monitor and report on project status and delivery through the CTFP semi-annual review and M2 quarterly reporting processes.

#### **Summary**

OCTA's ECP provides grant funding to local jurisdictions for projects that support water quality improvements related to transportation infrastructure. The 2022 Tier 1 call has concluded, and staff is recommending Board approval to program \$3,120,217 in ECP funds to 13 local jurisdiction projects.

#### **Attachments**

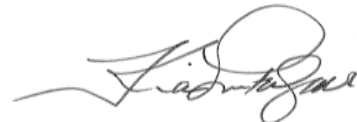
- A. Project X 2022 Tier 1 Call for Projects, Programming Recommendations
- B. Project X 2022 Tier 1 Call for Projects – Project Summaries
- C. Visual Samples of Recommended Best Management Practice Project Types

#### **Prepared by:**



Alison Army  
Principal Transportation Analyst  
(714) 560-5537

#### **Approved by:**



Kia Mortazavi  
Executive Director, Planning  
(714) 560-5741

### Project X 2022 Tier 1 Call for Projects Programming Recommendations

Projects Recommended for Funding						
Agency	Project	Project Description	Local Match	Score	Recommended M2 Project Allocation	Cumulative Funding
Laguna Hills	Connector Pipe Screen and Automatic Retractable Screen Project, Phase XI	Install 62 CPS-mod systems and 129 ARS-CL Curb Screens	20%	86	\$ 200,000	\$ 200,000
Stanton	Stanton Catch Basin Full Trash Capture System Installations - 2022	Install 26 CPS-mod systems and Five GITS devices	20%	83	\$ 61,890	\$ 261,890
Mission Viejo	Trash and Runoff Abatement Project: Northerly Area	Install 33 CPS-mod systems and 111 ARS-CL curb screens	20%	83	\$ 160,000	\$ 421,890
Seal Beach	2022 Environmental Cleanup Project	Install 57 CPS-mod systems, 117 GITS devices, and 48 ARS-FX curb-opening screens	20%	80	\$ 396,000	\$ 817,890
Anaheim	The Catch Basin Screen Installation Project - 2022	Install 373 CPS units	20%	80	\$ 499,366	\$ 1,317,256
Fullerton	Installation of Full Capture Trash Devices in Catch Basins - 2022	Install 24 CPS-mod systems and 48 GITS devices	20%	79.5	\$ 173,761	\$ 1,491,017
San Juan Capistrano	San Juan Capistrano High Priority CPS Screen Installation	Install 100 CPS units	20%	78	\$ 147,200	\$ 1,638,217
Orange	Debris Separating Baffle Box and Connector Pipe Screen BMP Installation	Install One DSBB and seven CPS units	20%	78	\$ 400,000	\$ 2,038,217
Costa Mesa	2022 Connector Pipe Screen Installation Project	Install 300 CPS units	20%	71	\$ 160,000	\$ 2,198,217
Huntington Beach	Huntington Beach Trash Removal Project Phase II - Atlanta Avenue Pump Station Retrofit	Install one in-line trash trap unit	33.5%	69	\$ 500,000	\$ 2,698,217
Westminster	2022 Catch Basin Screen Installation Project	Install 100 CPS units	20%	66	\$ 69,600	\$ 2,767,817
Laguna Niguel	Purchase and Installation of Trash Control Devices on Stormwater Catch Basins 2022	Install 196 CPS units	20%	65	\$ 196,000	\$ 2,963,817
Irvine	Citywide Catch Basin Connector Pipe Screen Installation Project - Phase 3	Install 230 CPS units	20%	65	\$ 156,400	\$ 3,120,217

Withdrawn by Applicant				
Agency	Project	Project Description	Score	M2 Funding Request
Newport Beach	Newport Bay Trash Boom System	Install one trash boom system	N/A	\$ 150,000

**Acronyms**

ARS - Automatic Retractable Screen  
 BMP - Best Management Practice  
 CPS - Connector Pipe Screen  
 DSBB - Debris Separating Baffle Box  
 GITS - Grated Inlet Trash Screen

M2 - Measure M2  
 N/A - Not Applicable

Project Descriptions		
Agency	Project Title	Project Highlights
Anaheim	The Catch Basin Screen Installation Project - 2022	The City of Anaheim proposes to install 373 CPS units at existing storm drain catch basins at strategic high-traffic sites located throughout the Anaheim watershed and storm drain system, protecting the Carbon Creek, Westminster, and Santa Ana River Watersheds.
Costa Mesa	2022 Connector Pipe Screen Installation Project	The City of Costa Mesa proposes to install 300 CPS units along priority land use drainage areas, downstream of bus stops and along transportation corridors. The project area falls within two principal watersheds, the Newport Bay watershed and the Santa Ana River watershed.
Fullerton	Installation of Full Capture Trash Devices in Catch Basins - 2022	The City of Fullerton proposes to install 24 CPS-mod systems and 48 GITS devices, prioritizing high-traffic areas with heavy pedestrian and vehicle traffic, such as industrial zones, commercial plazas, and apartments. The project area is expected to reduce the amount of transportation-related pollution entering Orange County's surface and groundwater systems.
Huntington Beach	Huntington Beach Trash Removal Project Phase II - Atlanta Avenue Pump Station Retrofit	The City of Huntington Beach proposes to install one in-line trash trap unit that would be located entirely within the City-owned Atlanta Avenue pump station yard, next to the Huntington Channel. The project area receives storm flows and runoff from a 247-acre watershed, of which 187 acres is a priority land use area.
Irvine	Citywide Catch Basin Connector Pipe Screen Installation Project - Phase 3	The City of Irvine proposes to install 230 CPS units at various locations throughout Irvine in order to protect the Upper Newport Bay. The specific locations were selected considering development areas, increased vehicle/pedestrian traffic, the absence of stormwater treatment by a natural treatment system, drainage from priority land use areas, and drainage to downstream receiving waters listed on the Clean Water Act List of Impaired Water Bodies.
Laguna Hills	Connector Pipe Screen & Automatic Retractable Screen Project, Phase XI	The City of Laguna Hills proposes to install 62 CPS-mod systems and 129 ARS-CL curb screens in catch basins in the northwest, central and south, and east side of Laguna Hills. These devices receive stormwater runoff from 234 total acres, of which 172 acres are in priority land use areas. The proposed project will protect water quality in three watersheds.
Laguna Niguel	Purchase and Installation of Trash Control Devices on Stormwater Catch Basins 2022	The City of Laguna Niguel proposes to install 196 CPS units that currently do not have trash control devices or have a trash control device that does not meet state requirements, largely in alternative land use areas.
Mission Viejo	Trash and Runoff Abatement Project: Northerly Area	The City of Mission Viejo proposes to install 33 CPS-mod systems and 111 ARS-CL curb screens in the northern area of Mission Viejo, protecting two watersheds, the San Juan Creek and Aliso Creek watersheds. All proposed project areas are considered priority land use areas, reducing stormwater pollution in commercial and high-density residential areas.
Orange	Debris Separating Baffle Box and Connector Pipe Screen Best Management Practice Installation	The City of Orange proposes to install one DSBB and seven CPS units. The DSBB would be located in the existing storm drain system that ultimately discharges into Buckeye Channel, collecting runoff from watershed 6 as described in the City of Orange Master Plan of Drainage. The CPS units would be installed within the City of Orange watersheds 6, 11, and 30.
San Juan Capistrano	San Juan Capistrano High Priority CPS Screen Installation	The City of San Juan Capistrano proposes to install 100 CPS units in catch basins located in high-density residential and commercial areas with high concentrations of industrial and commercial uses, as well as bus stops and driving routes that have a direct nexus to transportation-related activities affecting the San Juan Creek watershed.
Seal Beach	2022 Environmental Cleanup Project	The City of Seal Beach proposes to install 57 CPS-mod systems, 117 GITS devices, and 48 ARS-FX curb-opening screens in the not-yet-protected priority land use area of Leisure World Seal Beach, preventing pollution runoff for the San Gabriel watershed.
Stanton	Stanton Catch Basin Full Trash Capture System Installations - 2022	The City of Stanton (City) proposes to install 26 CPS-mod systems and five GITS devices in 31 City-owned catch basins, prioritizing those that do not already have a full trash capture device installed. The City proposes to target areas predominantly featuring high pedestrian and vehicular traffic, such as apartments, schools, and commercial zones.
Westminster	2022 Catch Basin Screen Installation Project	The City of Westminster proposes to install 100 CPS units servicing priority land use areas. The first priority is 31 catch basins in priority land use areas, and the second priority is for 69 residential catch basins to offset a portion of the trash from catch basins in priority land use areas that are not able to be equipped with CPS units.

**Acronyms**

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**Visual Samples of Recommended Best Management Practice  
Project Types\***

**Connector Pipe Screen**



**Automatic Retractable Screen**



## Visual Samples of Recommended Best Management Practice Project Types\*

### Grate Inlet Trash Screen Unit



### Debris Separating Baffle Box



## Visual Samples of Recommended Best Management Practice Project Types\*

### In-Line Trash Trap



\*Photographs are for visualization purposes. Actual final devices installed may be different depending on final procurement, site characteristics, final specs, etc.





# Agenda Item

## City Council

Item #: 3.7.

12/13/2022

File #: 22-0690

**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Dave Curtis, Library Services Director

### 1. SUBJECT

Appropriation of \$30,000 in designated grant funding received from California State Library.

### 2. SUMMARY

Grant funds from California State Library will be used to enhance and expand the Orange Public Library's environmental education collections and programming for all ages.

### 3. RECOMMENDED ACTION

1. Accept into the City's budget \$30,000 in grant funds from California State Library into revenue account number 100.2001.45290.30213, General Fund - Sustainable Orange Grant.
2. Authorize the appropriation of \$30,000 in grant funds into expenditure account number 100.2016.53340.30213, General Fund - Sustainable Orange Grant.

### 4. FISCAL IMPACT

The total appropriation for this grant is funded by the additional revenue received from the State of California.

### 5. STRATEGIC PLAN GOALS

Goal 3: Enhance and promote quality of life in the community

- e: Develop and strengthen collaborative partnerships to enhance and promote quality of life programs, projects and services

### 6. DISCUSSION AND BACKGROUND

The Orange Public Library has been awarded a Sustainable California Libraries Grant for Fiscal Year 2022-2023 (FY23). California State Library has generously provided support in Federal Library Services and Technology Act (LSTA) funds to expand and enhance the Library's environmental education collections and programming for all ages. Orange Public Library is one of only twenty California library systems to receive this funding.

The Sustainable California Libraries Grant supports library projects focused on environmental education, sustainability, climate resilience, and conservation. To implement its Sustainable Orange: Preserving Our Future project, the Library will reach out to potential local partners on programming including the UCCE Master Gardeners of Orange County, UCCE Master Food Preservers of Orange County, OC Beekeepers, and CR & R Inc. Storytimes and programs will focus on water conservation, food preservation, sustainable gardening, seed preservation, beekeeping, and organic waste



recycling. Program attendees will receive take & make seed growing kits, so they can start and grow their own sustainable gardens at home. Programs will be presented from January through June 2023.

The Library will continue its collaboration with Orange Home Grown and the Orange Public Library Foundation on their Seed Lending Libraries by adding a new seed library at Taft Branch Library. Over the past six years, library patrons have checked out over 30,000 seed packets from the Orange Public Library & History Center and El Modena Branch Library, and over 1,750 gardens have sprouted in Orange.

The patio adjacent to the El Modena Branch Library Community Room will be enhanced through the addition of raised beds, plants, and furniture to create a teaching garden area and attractive and functional space for future outdoor programs and activities.

All funds must be spent or encumbered by the end of June 2023 and will be used for new books, speaker fees, and supplies and furniture for the teaching garden and seed library.

## **7. ATTACHMENTS**

- Sustainable Orange Grant Award Letter



# Agenda Item

## City Council

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## **7. ATTACHMENTS**

- Sustainable Orange Grant Award Letter



October 21, 2022

Dave Curtis, Library Services Director  
Orange Public Library  
407 E Chapman Ave  
Orange, CA 92866

Dear Dave Curtis:

We are pleased to approve the grant application for the Sustainable Orange: Preserving Our Future project for a total of \$30,000 in federal Library Services and Technology Act (LSTA) funds.

Hard copies of this correspondence will not follow. Keep the entirety of this correspondence for your files and consider these award materials your original documents. Please refer to the Grant Guide located on the California State Library's [Manage Your Current Grant](https://www.library.ca.gov/grants/manage/) webpage (<https://www.library.ca.gov/grants/manage/>) for more information and review the following:

#### LSTA Funds

Processing of grant payments may take from eight to ten weeks before delivery. If you have not received payment ten weeks after submitting your claim form to the State Library's Fiscal Department, please contact your Grant Monitor.

#### Project Support

There are two people assigned to your project. The first is your Grant Monitor. Contact them regarding compliance and reporting. The Grant Monitor assigned to your project is Michelle Killian and can be reached via email at [michelle.killian@library.ca.gov](mailto:michelle.killian@library.ca.gov). You are also assigned a LPC for ongoing programmatic support. The LPC assigned to your project is Julianna Robbins and can be reached via email at [julianna.robbins@library.ca.gov](mailto:julianna.robbins@library.ca.gov).

Please stay in touch with your Grant Monitor and LPC throughout the award period. Read the enclosed award packet thoroughly and contact your Grant Monitor if you have any questions.

Best wishes for a successful project.

Respectfully yours,

DocuSigned by:  
  
BDA50981C41C416...

Greg Lucas  
California State Librarian

cc: Melody Sawyer [msawyer@cityoforange.org](mailto:msawyer@cityoforange.org)  
Julianna Robbins [julianna.robbins@library.ca.gov](mailto:julianna.robbins@library.ca.gov)  
Michelle Killian [michelle.killian@library.ca.gov](mailto:michelle.killian@library.ca.gov)  
Dan Webster [federalgrants.fiscal@library.ca.gov](mailto:federalgrants.fiscal@library.ca.gov)  
Angie Shannon [angie.shannon@library.ca.gov](mailto:angie.shannon@library.ca.gov)  
Reed Strege [reed.strege@library.ca.gov](mailto:reed.strege@library.ca.gov)  
Natalie Cole [natalie.cole@library.ca.gov](mailto:natalie.cole@library.ca.gov)



# Agenda Item

## City Council

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**Item #:** 3.8.

12/13/2022

**File #:** 22-0674

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Christopher Cash, Public Works Director

### 1. SUBJECT

Award of Contract to Tess Electric, Inc. for electrical improvements at Wells 23 and 24.

### 2. SUMMARY

Three contractors were solicited, and Tess Electric, Inc. of Riverside was the only responsive bid with a proposal to complete the work for \$35,532.

### 3. RECOMMENDED ACTION

Approve the contract with Tess Electric, Inc. in the amount of \$35,532 for electrical improvements at Wells 23 and 24; and authorize the Mayor and City Clerk to execute on behalf of the City.

### 4. FISCAL IMPACT

The total expenditure for this contract is \$35,532 and will be funded 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

Both Wells 23 and 24 were out of service for over a year to accommodate the installation of PFAS treatment systems. As a precautionary practice, a thorough inspection was conducted prior to the wells being put back in service. Upon meeting with three electrical contractors who have been working with the Public Works Water Division over the years, it was recommended that the soft starters for the boosters at Well 24 be replaced, and new soft starters be installed at Well 23, which was originally constructed without these units. These soft starters are equipped to help enable a smooth startup of the motor by eliminating stresses on the motor and electrical cable and help prolong the life of the motors.

Through an informal bid process, the Public Works Water Division met with three electrical contractors at the sites and requested for bids for these improvements. Two contractors: Halcyon Electric and Electrical Service Solutions, Inc. were unable to submit a bid due to scheduling conflicts.

Tess Electric Inc.'s bid came in at \$35,532, which is considered reasonable.

The Water Division has worked with Tess Electric, Inc. on several projects in past years and has found them to be very responsive to our calls, as well as very familiar with our equipment and safety requirements.

## **7. ATTACHMENTS**

- Contract with Tess Electric, Inc.



# Agenda Item

## City Council

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- Contract with Tess Electric, Inc.



**CONTRACT**  
**[Soft Starters Replacement for Wells 23 and 24]**

**THIS CONTRACT** (the "Contract") is made and entered into as of \_\_\_\_\_, 2022 ("Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and TESS ELECTRIC 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) 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 designee);

(2) 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;"

(3) Contractor's 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 is 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 Senior Civil Engineer, Tuan Cao ("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 fifteen (15) 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 **THIRTY-FIVE THOUSAND FIVE HUNDRED THIRTY-TWO DOLLARS and 00/100 (\$35,532.00)** 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.

## **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**

**a.** At all times during the term of this Contract, 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 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 ([www.dir.ca.gov/DLSR](http://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.

**b.** Attached hereto as Attachment No. 1 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 Contractor's 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 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”**

Tess Electric Inc.  
12142 Severn Way  
Riverside, CA 92503

Attn: Michael Beebe/President

Telephone: (951) 427-1735  
E-Mail: mike@tesselectricsocal.com

#### **“CITY”**

City of Orange  
300 E. Chapman Avenue  
Orange, CA 92866-1591

Attn: Jose Diaz/Water Manager

Telephone: (714) 288-2475  
E-Mail: jdiaz@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 Attachment No. 2, 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.

**[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”**

TESS ELECTRIC 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 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 subcontractor is registered. The stop order shall not apply to 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.

(l) 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 1776 for 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 division and 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.

(l) 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 ½ 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 has been identified in writing. 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.

# Tess Electric Inc.

12142 Severn Way, Riverside, Ca 92503  
Phone 951-427-1735  
Lic. 1057586

From: Gregory Beebe  
Greg@tesselectricsocal.com

Quote Number# 0000142

September 28, 2022

To: Mark Oellette, City of Orange  
mouellette@cityoforange.org

**Project: 350HP, 460V, Soft Starter Retrofit for Well 23**

Tess Electric is pleased to offer the following quote to supply and install a Weg SSW900 series soft starter into the existing A/B MCC sections. The existing RVAT controller will be removed. The new starter is rated for 412 amps @ 460V and the existing control logic will be modified to work with the unit. The soft starter has the shunting contactor built into the device. The soft starter's HMI Keypad will be mounted onto the door front for easy access and motor reads. The unit will be programmed to operate with the existing control logic.

The city is to assist Tess Electric in removing the RVAT autotransformer with their crane truck. The city will decide on disposal of the old equipment for the recyclers.

Currently the soft starter is stock at the factory.

Total Cost.....\$ 15,235.00

Sales tax and inbound freight charges are included.

**EXCLUSIONS:**

- 1) Permits.
- 2) Performance Bonds.

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per 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, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance. Quote valid for 15 days. This quote is for a prevailing wage project and all employees of Tess Electric employees shall receive the set prevailing wage compensation per DIR standards.

Sales tax is additional if applicable. Prices are good for 30 days, subject to change without notice. Please note that this is not an offer to contract, but merely a quotation of current prices for your convenience and information. Orders based on this quotation are subject to our acceptance on the terms and conditions stated in our written acknowledgement of order. We make no representations with respect to compliance with job specifications.

# Tess Electric Inc.

12142 Severn Way, Riverside, Ca 92503

Phone 951-427-1735

Lic. 1057586

From: Gregory Beebe  
Greg@tesselectricsocal.com

**Quote Number# 0000143A**

Date: October 10, 2022

To: Mark Ouellette, City of Orange

## **Project: Well 24 Boosters Soft Starter Retrofit Revised Quote.**

Dear Mark:

Tess Electric is pleased to offer the following alternative quote to supply and install 100HP, 460V Weg SSW900 series soft starter and a door mounted HIM keypad kit on the outer door. The existing control logic will be modified to accommodate the new starter. Start up and programming is included. The door mounted keypad will allow for safe access of motor information (such as voltage & current) and starter programming.

Total Cost for all 3 sections ..... \$ 20,297.00

(Sales tax and inbound freight charges included)

### **EXCLUSIONS:**

- 1) Permits.
- 2) Performance Bonds.

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per 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, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance. Quote valid for 30 days. This quote is for a prevailing wage project and all employees of Tess Electric shall receive the set prevailing wage compensation per DIR standards.

Sales tax is additional if applicable. Prices are good for 30 days, subject to change without notice. Please note that this is not an offer to contract, but merely a quotation of current prices for your convenience and information. Orders based on this quotation are subject to our acceptance on the terms and conditions stated in our written acknowledgement of order. We make no representations with respect to compliance with job specifications.



# Agenda Item

## City Council

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**Item #:** 3.9.

12/13/2022

**File #:** 22-0681

---

**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, 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 approving a development agreement with Old Town Gateway, LLC for a project on a site located at 401 W. Chapman Avenue and 135 N. Atchison Street. Development Agreement No. 0008-22. Ordinance No. 08-22.

### 2. SUMMARY

The Introduction and First Reading of the above-entitled Ordinance was approved at an adjourned Regular Council Meeting on November 15, 2022.

The Ordinance is now presented for Second Reading by title only, and adoption.

Vote at First Reading:      AYES:          Murphy, Nichols, Dumitru, Tavoularis  
   NOES:          Barrios, Gutierrez  
   ABSENT:      Monaco

### 3. RECOMMENDED ACTION

Adopt Ordinance No. 08-22.

### 4. ATTACHMENTS

- Ordinance No. 08-22.



# Agenda Item

## City Council

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12/13/2022

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### 3. RECOMMENDED ACTION

Adopt Ordinance No. 08-22.

### 4. ATTACHMENTS

- Ordinance No. 08-22.



**ORDINANCE NO. 08-22**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ORANGE APPROVING A  
DEVELOPMENT AGREEMENT WITH OLD  
TOWN GATEWAY, LLC FOR A PROJECT ON A  
SITE LOCATED AT 401 W. CHAPMAN AVENUE  
AND 135 N. ATCHISON STREET.**

**DEVELOPMENT AGREEMENT NO. 0008-22  
APPLICANT: OLD TOWN GATEWAY, LLC**

**WHEREAS**, the Planning Commission conducted a duly advertised public hearing on October 17, 2022, at which time interested persons had an opportunity to testify either in support of or opposition to a project consisting of rehabilitation of two historic buildings, demolition of non-historic sheds, construction of two new commercial buildings with floor areas of 3,470 sq. ft. and 4,140 sq. ft., construction of a public pedestrian walkway, and lot consolidation on a 30,300 square foot site located at 401 W. Chapman Avenue and 135 N. Atchison Street, including Major Site Plan Review No. 1013-20, Tentative Parcel Map No. 0017-20 and Design Review No. 5011-20 (the “Project”); and

**WHEREAS**, in conjunction with the Project, a Development Agreement application was filed by OLD TOWN GATEWAY, LLC as authorized by the City of Orange Municipal Code; and

**WHEREAS**, the Development Agreement application was processed in the time and manner consistent with state and local law; and

**WHEREAS**, the Planning Commission unanimously recommended approval of the Project and the Development Agreement and determined that the Project is categorically exempt from the provisions of the California Environmental Quality Act (“CEQA”) per State CEQA Guidelines Section 15331 (Class 31 – Historical Resource Rehabilitation/Restoration) and 15332 (Class 32 – Infill Development Projects) and no public review is required; and

**WHEREAS**, the City Council conducted a duly advertised public hearing on November 15, 2022, at which time interested persons had an opportunity to testify either in support of or opposition to the Project and the Development Agreement.

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

**SECTION I:**

- 1. The Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan or redevelopment plan.*

The Development Agreement and related enhanced public benefits offered in conjunction with the Project are consistent with the objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan or redevelopment plan.

The General Plan Economic Development Element calls for the City to strengthen the City's economic base and stimulate employment through new commercial and industrial development and expansion.

2. *The Development Agreement is compatible with the uses authorized in the district or planning area in which the real property is located.*

The Development Agreement and related enhanced public benefits offered in conjunction with the Project are compatible with the uses authorized in the district or planning area in which the real property is located.

3. *The Development Agreement is in conformity with the public necessity, public convenience, general welfare, and good land use practices.*

The Development Agreement and related enhanced public benefits offered in conjunction with the Project are consistent with public necessity, public convenience, and general welfare through the improvement of vacant property, the expansion of employment opportunities, increased sales tax revenues, and improved pedestrian access to and from the Santa Fe Depot.

4. *The Development Agreement will be beneficial to the health, safety, and general welfare consistent with the policy of the City with respect to development agreements as provided in Section 17.44.200.*

The development of the site replaces an underutilized and unrehabilitated property with a modern, attractive commercial development that is beneficial to the local economy and generates revenue to support local government services that improve the quality of life for the community.

5. *The Development Agreement will not adversely affect the orderly development of property in the City.*

The Development Agreement and related enhanced public benefits offered in conjunction with the Project will ensure that it is compatible with the existing development of the surrounding area.

## **SECTION II:**

The Development Agreement for the Project is approved and adopted as shown in Exhibit "A," attached hereto and incorporated herein by reference.

## **SECTION III:**

The Development Agreement described in Section II is consistent with the finding of categorical exemption pursuant to CEQA Guideline 15331 (Class 31 – Historical Resource

Rehabilitation/Restoration) and 15332 (Class 32 – Infill Development Projects) for Major Site Plan Review No. 1013-20, Tentative Parcel Map No. 0017-20 and Design Review No. 5011-20 and no further environmental analysis is necessary because technical studies were prepared and found no impact to environmental issues related to traffic, noise, air quality, energy, greenhouse gas emissions, and water quality. No environmental public review is required because:

1. The structures on the site have been closely evaluated in the Cultural Resource Assessment and Addendum, with the buildings confirmed as contributors to the historic district planned for restoration and rehabilitation. While the assorted structures constructed outside of the period of significance for the historic district are over 50 years old, their modifications, dates of construction, and characteristics do not support their classification as contributors to the historic district. As non-contributors, their demolition does not represent an adverse effect on the historic district; and
2. The project site is less than 5 acres in size, is located in an urbanized area served by infrastructure, and on a site where the General Plan and zoning allow the proposed uses.

#### **SECTION IV:**

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 V:**

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 \_\_\_\_\_, 2022.

---

Mark A. Murphy, Mayor, City of Orange

#### **ATTEST:**

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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 an adjourned regular meeting of the City Council held on the 15th day of November, 2022, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_ day of \_\_\_\_\_, 2022 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

**EXHIBIT “A”**

**DEVELOPMENT AGREEMENT**

**[Beneath this sheet.]**

EXEMPT FROM RECORDER'S FEES  
Pursuant to Government Code §§ 6103 and 27383

Recording requested by and when recorded return to:

City Clerk  
City of Orange  
300 East Chapman Avenue  
Orange, CA 92866

(SPACE ABOVE FOR RECORDER'S USE)

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**CITY OF ORANGE,**

**a California Municipal Corporation,**

**and**

**OLD TOWN GATEWAY, LLC,**

**a California Limited Liability Company**

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of \_\_\_\_\_, 2022 (“Effective Date”), by and between OLD TOWN GATEWAY, LLC (“OWNER”), and the CITY OF ORANGE, a municipal corporation, organized and existing under the laws of the State of California (“CITY”), pursuant to the authority of California Government Code Sections 65864 et seq. (“Development Agreement Law”) and California Constitution Article XI, Section 7 as implemented through Orange Municipal Code Chapter 17.44.

### **RECITALS**

This Agreement is predicated upon the following facts:

A. These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. The parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

B. Development Agreement Law authorizes CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other matters, ensure high quality development in accordance with comprehensive plans; provide certainty in the approval of development projects so as to avoid the waste of resources and the escalation in the cost of development to the consumer; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to conditions of approval, in order to strengthen the public planning process and encourage private participation in comprehensive planning and reduce the private and public economic costs of development; and provide for benefits to OWNER for the construction and financing of certain public improvements and public benefits.

C. OWNER has a legal and equitable interest in and plans to rehabilitate two historic buildings for restaurant uses, demolish non-historic sheds, and construct two new buildings for commercial uses totaling 7,610 square feet on the property located at 401 W. Chapman Avenue (the “Project”).

D. OWNER has applied for, and CITY has approved the Project with Major Site Plan Review No. 1013-20, Design Review No. 5011-20, and Tentative Parcel Map No. 0017-20 (the “Existing Project Approvals”), and adopts this Agreement in order to create a Project and a physical environment that will conform to and complement the goals of CITY, consistent with the elements and policies of CITY’s General Plan.

E. In consideration of the substantial public improvements and benefits to be provided by OWNER and the Project, and in order to strengthen the public financing and planning process and reduce the economic costs of development, by this Agreement CITY intends to give OWNER assurance that OWNER can proceed with the development of the Project for the Term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with CITY’s General Plan, ordinances, policies, rules and regulations existing as of the Effective Date. In reliance on CITY’s covenants in this Agreement concerning the Development of the Property,

OWNER has and will in the future incur substantial costs in site preparation and the construction and installation of major infrastructure and facilities in order to make the Project feasible.

F. Pursuant to Section 65867.5 of the Development Agreement Law, the City Council has found and determined that: (i) this Agreement and the Existing Project Approvals implement the goals and policies of CITY's General Plan, provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain and improve the overall quality of life and the environment within CITY; (ii) this Agreement is in the best interests of and not detrimental to the public health, safety and general welfare of CITY and its residents; (iii) adopting this Agreement is consistent with CITY's General Plan and constitutes a present exercise of CITY's police power; and (iv) this Agreement is being entered into pursuant to and consistent with the requirements of Section 65867 of the Development Agreement Law and Orange Municipal Code Chapter 17.44.

G. CITY and OWNER agree that it may be beneficial to enter into additional agreements or to modify this Agreement with respect to the implementation of the separate components of the Project when more information concerning the details of each component is available, and that this Agreement should expressly allow for such contemplated additional agreements or modifications to this Agreement.

**NOW, THEREFORE,** pursuant to the authority contained in Development Agreement Law, as it applies to CITY, pursuant to California Constitution Article XI, Section 7, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement and for other consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** The following words and phrases are used as defined terms throughout this Agreement, and each defined term shall have the meaning set forth below.

1.1 **Authorizing Ordinance.** The "Authorizing Ordinance" means Ordinance No. 08-22 approving this Agreement.

1.2 **City Council.** "City Council" means the duly elected and constituted city council of CITY.

1.3 **Development.** "Development" means the improvement of 401 W. Chapman Avenue in the City of Orange (the "Property") for purposes of completing the Project, including, without limitation: grading, the construction of infrastructure and public facilities related to the Project (whether located within or outside the Property), the construction of structures and buildings and the installation of landscaping.

1.4 **Development Plan.** The "Development Plan" consists of the Existing Project Approvals, the Existing Regulations, and those Future Project Approvals (such as precise development plans) contemplated, necessary, and requested by OWNER to implement the Project Approvals.



1.5 **Development Transferee.** “Development Transferee” means an assignee or transferee from OWNER of all or a portion of OWNER’s interest in the Property pursuant to Section 3 and the successors and assigns of any such transferee.

1.6 **Effective Date.** “Effective Date” means the date that the Authorizing Ordinance becomes effective.

1.7 **Existing Project Approvals.** “Existing Project Approvals” are those Project Approvals, including Major Site Plan Review No. 1013-20, Design Review No. 5011-20, and Tentative Parcel Map No. 0017-20 which have been approved by the CITY on October 17, 2022, consistent with the Existing Regulations.

1.8 **Existing Regulations.** “Existing Regulations” means those ordinances, rules, regulations, policies, requirements, guidelines, constraints or other actions of CITY, other than site-specific Project Approvals, which purport to affect, govern or apply to the Property or the implementation of the Development Plans in effect on October 17, 2022.

1.9 **On-Site Improvements.** “On-Site Improvements” means physical infrastructure improvements or facilities that are or will be located on the Property.

1.10 **OWNER.** “OWNER” is Old Town Gateway, LLC, a California limited liability company and successors and assigns.

1.11 **Project Approvals.** “Project Approvals” means Major Site Plan Review No. 1013-20, Design Review No. 5011-20, and Tentative Parcel Map No. 0017-20 and any future Project-related entitlements approved by CITY.

## 2. **Term and Termination.**

2.1 The Term of this Agreement shall commence on the Effective Date and shall extend for a period of three (3) years thereafter, terminating at the end of the day preceding the third anniversary of the Effective Date, subject to specific extensions, revisions and termination provisions of this Agreement. The Existing Project Approvals are valid and shall not expire for the Term of this Agreement (as such Term may be extended). If construction has commenced within such three (3) year period, the Term of this Agreement shall automatically be extended until the completion of the events specified in Section 2.2.2. Once an occupancy permit has been issued for the Project, or the Project is otherwise vested pursuant to California law, the Existing Project Approvals and OWNER Obligations shall be deemed permanently vested and control the use of the Property.

2.2 This Agreement shall be deemed terminated and of no further effect upon the occurrence of either of the following events:

2.2.1 If termination occurs pursuant to any specific provision of this Agreement;  
or

2.2.2 Completion of the total build-out of the Project pursuant to the terms of this Agreement and CITY’s issuance of all required occupancy permits and acceptance of all dedications and improvements required to complete Development of the Project.

2.3 The termination of this Agreement shall not affect any right or duty arising independently from entitlements issued by CITY or other land use approvals approved concurrently or subsequent to the approval of this Agreement.

### 3. **Transfers and Assignments.**

3.1 **Right to Assign.** OWNER shall have the right to sell, assign or otherwise transfer all or any portion of its interests in the Property together with all its right, title and interest in this Agreement, or the portion thereof which is subject to transfer (the “Transferred Property”) to a Development Transferee at any time during the Term of this Agreement. In the event of any such sale, assignment, or other transfer (i) OWNER shall notify CITY thirty (30) days prior to such event of the name of the Development Transferee, together with the corresponding entitlements being transferred to such Development Transferee; and (ii) the agreement between OWNER and such Development Transferee pertaining to such transfer shall provide that either OWNER or the Development Transferee shall be liable for the performance of those obligations of OWNER under this Agreement which relate to the Transferred Property, if any. Each Development Transferee and OWNER shall notify CITY in writing which entity shall be liable for the performance of each respective obligation hereunder within thirty (30) days prior to the date of any sale, assignment or transfer pursuant to this subsection. OWNER shall be released from any obligations assumed by a Development Transferee.

3.2 **Effect of Noncompliance.** From and after the assumption of obligations under this Agreement by a Development Transferee pursuant to Section 3.1, noncompliance by any such Development Transferee with the terms and conditions of this Agreement assumed by such Development Transferee shall entitle CITY to pursue any and all of its rights under this Agreement so assumed against such Development Transferee, but such noncompliance shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for CITY to initiate enforcement action against, other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder. Similarly, noncompliance by OWNER with respect to any terms and conditions of this Agreement not assumed by such Development Transferee shall entitle CITY to pursue any and all of its rights under this Agreement retained by OWNER against OWNER, but such noncompliance by OWNER shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for CITY to initiate enforcement action against, such Development Transferee or other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder.

3.3 **Rights of Successors and Assigns.** Except as otherwise set forth in this Agreement, a Development Transferee shall have all of the same rights, benefits and obligations of OWNER under this Agreement.

### 4. **Revisions to Development Agreement.**

4.1 **Initiation of Amendment.** Either party may propose an amendment to this Agreement when that party believes it would be beneficial to enter into additional agreements or modification of this Agreement in connection with the implementation of the separate components of the Project.

4.2 **Procedure.** Except as set forth in Section 4.5 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure followed for entering into this Agreement in the first instance.

4.3 **Cancellation.** Either party may propose cancellation of this Agreement.

4.4 **Consent.** Except as expressly provided in this Agreement, any amendment to or cancellation of this Agreement shall require the written consent of both parties. No amendment to or cancellation of all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each party.

4.5 **Consent of OWNER.** Where an assignee of OWNER applies for an amendment to this Agreement, the written consent of OWNER shall always be required before CITY approval of the amendment unless the Development Transferee has assumed all obligations under this Agreement. Further, an assignee shall not be required to approve an amendment to this Agreement. The recordation of this Agreement shall serve as notice to all assignees of the provisions of this Agreement.

4.6 **Operating Memoranda.** The parties acknowledge that refinements and further development of the Project may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project Development and with respect to those items covered in general terms under this Agreement. If and when the parties mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications without amendment to this Agreement as specified in the Project Approvals, and through operating memoranda mutually approved by the parties. The Orange City Manager or designee, and any corporate officer or other person designated for such purpose in a writing signed by a corporate officer on behalf of OWNER, are authorized to execute said operating memoranda. After execution, said operating memoranda shall be attached hereto as addenda and become a part hereof and may be further changed and amended from time to time as necessary, with further approval by the parties. Unless otherwise required by law or by the Project Approvals, no such changes, adjustments, or clarifications shall require prior notice or hearing.

4.7 This Section shall not limit CITY's or OWNER's remedies as provided by Section 10.

## 5. **Description of Development.**

### 5.1 **Development and Control of Development.**

5.1.1 **Project.** During the Term of this Agreement, OWNER shall have the vested right to implement the Development pursuant to this Agreement and the Project Approvals and CITY shall have the right to control the Development of the Project in accordance with the terms and conditions of this Agreement.

5.1.2 **Permits and Future Project Approvals.** CITY shall accept and timely process, in the normal and legal manner for processing such matters, all applications for Future

Project Approvals called for or required under this Agreement. The Existing Project Approvals are in full force and effect and the expiration of such Existing Project Approvals shall not occur unless the Term of this Agreement expires, and vested rights have not been achieved under California law.

5.2 **Rules, Regulations and Official Policies.** Except as otherwise specified in this Agreement and the Project Approvals, the rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use of the Property, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to Development of the Property shall be the Existing Regulations and the Existing Project Approvals. In connection with any subsequent approval or action which CITY is permitted or has the right to make under this Agreement relating to the Project, CITY shall exercise its discretion or take action in a manner which complies and is consistent with the Project Approvals, the Existing Regulations and such other standards, terms and conditions contained in this Agreement.

5.3 **Reserved Authority.**

5.3.1 **Uniform Codes.** This Agreement shall not prevent CITY from applying new rules, regulations and policies relating to uniform codes (such as the Uniform Building Code, National Electrical Code, Uniform Mechanical Code or Uniform Fire Code, as amended) adopted by the State of California, which new rules and regulations are necessary to preserve the health and safety of the residents of CITY or which CITY is required by state law to apply.

5.3.2 **State and Federal Laws and Regulations.**

5.3.2.1 **Precedence of State and Federal Laws.** In the event that state or federal laws or regulations prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

5.3.2.2 **Subsequent Amendment to Authorizing Statutes.** This Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation in effect as of the Effective Date. Accordingly, to the extent that subsequent amendments to the Government Code would affect the provisions of this Agreement, such amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868 as in effect on the Effective Date.

5.3.3 **Regulation for Health and Safety.** Notwithstanding anything to the contrary in this Agreement, CITY shall have the right to apply regulations (including amendments to the Existing Regulations) adopted by CITY after the Effective Date, in connection with any Project Approvals, or deny, or impose conditions of approval on, any Project Approvals provided that such application to the Development is required to protect the physical health and safety of

existing or future residents or occupants of the Property, or any portion thereof or any lands adjacent thereto. OWNER may protest the imposition of any such regulations or conditions to the City Council or as otherwise provided by CITY rules or regulations while continuing to construct the Development.

5.3.4 **Procedure For Application of New Regulations.** CITY shall not apply to the Project any regulation, law, program, ordinance or action under Section 5.3.1, 5.3.2, or 5.3.3 (except for emergency ordinances adopted to protect health and welfare as set forth therein) which is not an Existing Regulation (“New Regulation”) without providing at least thirty (30) days’ prior written notice to OWNER of CITY’s intent to apply such New Regulation to the Project. OWNER shall have thirty (30) days from the date of such notice to review and evaluate the New Regulation and to serve CITY with a written protest (“Protest”) against the application of the New Regulation to the Project. If OWNER timely provides the Protest to CITY, then CITY will not apply the New Regulation to the Project until the City Council makes a finding, after a duly noticed public hearing, that such New Regulation does not conflict with the Existing Regulations as applied to the Project and is required (as opposed to permitted) to comply with state or federal laws or regulations after taking into consideration all reasonable alternatives. Should OWNER elect to continue to construct the Development after receipt of notice of the applicability of any New Regulation described in Section 5.3.3 to such construction, OWNER does so at its own risk.

5.4 **Vested Rights.** By entering into this Agreement and relying thereon, OWNER obtains vested rights to proceed with the Project in accordance with the terms and conditions of this Agreement, and in accordance with, and to the extent of, the Project Approvals. By entering into this Agreement and relying thereon, CITY secures significant public benefits and facilities which enhance the public health, safety and welfare, a partial listing of which benefits is set forth in Section 6.

5.5 **Consistency Between This Agreement and Current Laws.** CITY represents that there are no rules, regulations, ordinances, policies or other measures of CITY in force as of the Effective Date that would interfere with Development and use of all or any part of the Project according to the Project Approvals and this Agreement. The parties understand and acknowledge that the Agreement is consistent with CITY’s General Plan and zoning for the Property.

5.6 **Future Amendments to Development Plan.** The following rules apply to future amendments to the Development Plan:

5.6.1 **Compliance.** Any Development Plan amendment which is not in compliance with Section 4 of this Agreement shall not apply to the Property or the Project while this Agreement is in effect.

5.6.2 **Concurrent Development Agreement Amendment.** Any Development Plan amendment requiring amendment of this Agreement shall be processed concurrently with an amendment to this Agreement

5.6.3 **Effect of Amendment.** Except as expressly set forth within this Agreement or in any amendment to this Agreement, a Development Plan amendment will not alter,

affect, impair or otherwise impact the rights, duties and obligations of the parties under this Agreement.

6. **CITY and OWNER Benefits and Obligations.**

6.1 **CITY Benefits.** The direct and indirect benefits CITY, its existing and future residents, will receive pursuant to the implementation of the Agreement include, but are not limited to, the following:

6.1.1 **Rehabilitation of Property.** The Development will result in the rehabilitation of a blighted property and restoration of historic buildings.

6.1.2 **Sales Tax Revenue.** The Development will generate sales tax revenue to support City services that improve the quality of life for residents.

6.1.3 **Public Access Paseo.** The dedication and maintenance by OWNER of a public access pedestrian walkway across the property between N. Atchison Street and N. Cypress Street (see Attachment 1), will connect the train depot to the Plaza area and create a more walkable Old Towne. This will help achieve a key objective identified in the Santa Fe Depot Specific Plan by creating a pedestrian connection between the train depot and Metrolink Parking Structure to compensate for the narrow sidewalks along those blocks of Chapman Avenue.

6.2 **OWNER Benefits.** The direct and indirect benefits OWNER and its transferees or assigns will receive pursuant to the implementation of the Agreement include, but are not limited to, the following:

6.2.1 **Parking.** In recognition of OWNER's dedication and maintenance of a public access pedestrian walkway, the Development will only be required to provide two parking spaces, both of which are ADA compliant.

6.2.2 **Development Assurances.** In recognition of the public benefits provided by OWNER, CITY provides OWNER with assurances that the Property may be developed in accordance with the Project Approvals and this Agreement. CITY agrees that it will not further restrict or limit the development of the Property in violation of this Agreement except in strict accordance with the Reserved Authority.

6.3 **CITY Obligations.** In recognition of the direct and indirect benefits to CITY by OWNER as provided in this Section 6, CITY agrees that it will not further restrict or limit the development of the Property in violation of this Agreement except in strict accordance with the Reserved Authority.

6.4 **OWNER Obligations.** In recognition of the direct and indirect benefits to OWNER by CITY as provided in this Section 6, OWNER agrees as follows:

6.4.1 To provide a public access pedestrian walkway (paseo) in a location as depicted in the Existing Project Approvals.

6.4.2 To maintain in perpetuity the public access pedestrian walkway in good condition, free from any accumulation of debris and waste materials, and in compliance with all applicable laws.

## **7. Indemnification.**

7.1 **Defense Obligations.** Except to the extent of the gross negligence or willful misconduct of the Indemnified Parties (as defined below), OWNER, and with respect to the portion of the Property transferred to them, the Development Transferees, agree during the term of this Agreement, to, at CITY's request, defend CITY and its agents, officers, and employees (the "Indemnified Parties") from and against any claims, including claims for attorneys' fees, or proceeding against the Indemnified Parties to set aside, void or annul the approval of this Agreement or the Project Approvals.

7.2 **Notification Obligation.** CITY agrees to timely take all actions necessary or required to uphold the validity and enforceability of this Agreement and the Existing Regulations and shall promptly notify OWNER of any claim, action or proceeding brought challenging any provision of this Agreement or the Project Approvals. Should CITY fail to promptly and timely notify OWNER or cooperate fully or decide to terminate this Agreement, OWNER shall be relieved of its defense and indemnity obligations hereunder as to that specific claim, action or proceeding.

7.3 **Selection of Counsel; Costs of Defense.** OWNER and CITY shall jointly select legal counsel to conduct such defense which legal counsel shall represent both OWNER and CITY in defense of such action. OWNER and CITY shall meet and confer to determine the reasonable estimate of the costs of defense of any such claim or action and OWNER shall deposit a sufficient portion of said amount with CITY to ensure CITY that it will have sufficient funds to pay the costs of defense until a further deposit is required, if any. CITY will draw down on such funds to pay for costs of defense and may require additional deposits if it appears that the costs of defense will exceed the amount on deposit. CITY shall refund, without interest, any unused portions of the deposit once the claim or action is finally concluded.

7.4 **Defense and Settlement.** OWNER shall have the right to direct the prosecution, strategy and settlement of any defense hereunder in consultation with CITY, provided however, that CITY and OWNER agree not to unreasonably withhold or delay approval of the settlement of any claim or action which does not significantly impair the rights and obligations of either party under this Agreement or the Project Approvals.

7.5 **Survival of Provisions.** 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 the Indemnified Parties and their successors.

8. **Relationship of Parties.** The contractual relationship between CITY and OWNER is such that OWNER is independent from and not an agent or employee of CITY. CITY and OWNER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with the Project shall be construed as making CITY and OWNER joint venturers or partners.

9. **Periodic Review of Compliance with Agreement.**

9.1 **Periodic Review.** CITY and OWNER shall review this Agreement at least once every twelve (12) month period from the Effective Date. CITY shall notify OWNER in writing of the date for review at least thirty (30) days prior thereto. Such periodic review shall be conducted in accordance with Government Code Section 65865.1.

9.2 **Good-Faith Compliance.** During each periodic review, OWNER shall be required to demonstrate good faith compliance with the terms of this Agreement. OWNER agrees to furnish such reasonable evidence of good faith compliance as CITY, in the exercise of its reasonable discretion, may require. If requested by CITY, CITY agrees to provide to OWNER, a Development Transferee or any party designated by OWNER or a Development Transferee, an estoppel certificate that OWNER or a Development Transferee is in compliance with the terms of this Agreement, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

9.3 **Failure to Conduct Annual Review.** The failure of CITY to conduct the annual review shall not be an OWNER default and OWNER shall not be entitled to any remedy for CITY failure to conduct the annual review.

9.4 **Initiation of Review by City Council.** In addition to the annual review, the City Council may at any time, but not more than once in any twelve (12) month period, initiate a review of this Agreement by giving written notice to OWNER. Within thirty (30) days following receipt of such notice, OWNER shall submit evidence to the City Council of OWNER's good faith compliance with this Agreement and such review and determination shall proceed in the same manner as provided for the annual review.

9.5 **Availability of Documents.** If requested by OWNER, CITY agrees to provide to OWNER copies of any documents, reports or other items reviewed, accumulated or prepared by or for CITY in connection with any periodic compliance review by CITY, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

10. **Events of Default; Remedies.** Unless amended or canceled as provided in Section 4, or modified or suspended pursuant to Government Code Section 65869.5, or terminated pursuant to this Section 10, this Agreement is enforceable by either party hereto.

10.1 **Defaults by OWNER.** If CITY determines on the basis of substantial evidence that OWNER has not complied in good faith with the terms and conditions of this Agreement, CITY shall, by written notice to OWNER, specify the manner in which OWNER has failed to so comply and state the steps OWNER must take to bring itself into compliance ("First Default Notice"). CITY and OWNER shall meet in good faith for the purpose of resolving any disputes within fifteen (15) days of OWNER's receipt of written notice of default from CITY. If CITY determines that following these meetings, OWNER is not taking necessary steps to cure such default, it shall provide notice of same to OWNER ("Second Default Notice") and if, within thirty (30) days after the effective date of such notice OWNER has failed to so comply or OWNER does not commence all steps reasonably necessary to bring itself into compliance as required and



thereafter diligently pursue such steps to completion, then OWNER may be deemed to be in default under the terms of this Agreement and CITY may initiate the process to terminate this Agreement pursuant to Development Agreement Legislation. In event of default by OWNER, except as provided in Section 10.3, CITY's sole remedy for any breach of this Agreement by OWNER shall be CITY's right to terminate this Agreement.

10.2 **Defaults by CITY.** If OWNER determines on the basis of substantial evidence that CITY has not complied in good faith with the terms and conditions of this Agreement, OWNER shall, by written notice to CITY, specify the manner in which CITY has failed to so comply and state the steps CITY must take to bring itself into compliance. CITY and OWNER shall meet in good faith for the purpose of resolving any disputes within fifteen (15) days of CITY's receipt of written notice of default from OWNER. If OWNER determines that following these meetings, CITY is not taking necessary steps to cure such default, it shall provide notice of same to CITY and if, within thirty (30) days after the effective date of such notice, CITY has failed to so comply or CITY does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then CITY shall be deemed to be in default under the terms of this Agreement and OWNER may initiate the process to terminate this Agreement and, in addition, may pursue any other remedy available at law or equity, including specific performance as long as such remedy is consistent with Section 10.3.

10.3 **Specific Performance Remedy.**

10.3.1 **OWNER's Remedies.** Due to the size, nature and scope of the Project, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement and the Project Approvals have begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts. For the above reasons, CITY and OWNER agree that damages alone would not be an adequate remedy if CITY fails to carry out its obligations under this Agreement and that, in addition to any all other remedies OWNER may have at law or in equity, including, without limitation, claims for general, special or compensatory damages for any default under this Agreement, OWNER shall have the right to seek and obtain specific performance or injunctive relief as a remedy for any breach of this Agreement. OWNER may seek to enjoin any threatened or attempted violation of this Agreement, seek to enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of OWNER.

10.3.2 **CITY's Remedies.** CITY's remedy of terminating this Agreement shall be sufficient if OWNER fails to carry out its obligations hereunder. Notwithstanding the above, CITY may not seek specific performance to require OWNER to construct the Development except to the extent that OWNER becomes otherwise obligated under this Agreement to construct any or all of the public facilities identified in the Development Plan. Nothing contained in this Agreement shall prevent OWNER from enforcing the right to seek a refund or return of a deposit made, or a fee paid, to CITY in accordance with the provisions of the Existing Rules.

10.4 **Institution of Legal Action.** OWNER may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. Such legal action shall be heard by a referee approved by the Orange County Superior Court pursuant to the applicable procedures of California Code of Civil Procedure (“CCP”) Sections 638, et seq. OWNER and CITY shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before it. If OWNER and CITY are unable to agree on a referee within ten (10) days of a written request to do so by either party hereto, either party may seek to have one appointed pursuant to CCP Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Section 10.4 shall be considered a temporary judge appointed pursuant to California Constitution Article VI, Section 21.

10.5 **Estoppel Certificates.** Either party may at any time deliver written notice to the other party requesting an estoppel certificate (“Estoppel Certificate”) stating:

10.5.1 The Agreement is in full force and effect and is a binding obligation of the parties.

10.5.2 The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

10.5.3 No default in the performance of the requesting party’s obligations under the Agreement exists or, if a default does exist, the nature and amount of any default.

A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager or designee may sign the Estoppel Certificate on behalf of CITY. Any officer of OWNER may sign on behalf of OWNER. An Estoppel Certificate may be relied on by assignees and mortgagees. In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto.

## 11. **Waivers and Delays.**

11.1 **No Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, and failure by a party to exercise its rights upon a default by the other party hereto, shall not constitute a waiver of such party’s right to demand strict compliance by such other party in the future.

11.2 **Third Parties.** Non-performance shall not be excused because of a failure of a third person, except as provided in Section 11.3.

11.3 **Force Majeure.** OWNER and CITY shall not be deemed to be in default where failure or delay in performance of any of their obligations under this Agreement is caused by floods, earthquakes, epidemics, other Acts of God, fires, wars, riots, or similar hostilities, strikes and other labor difficulties beyond OWNER or CITY control, including government regulations

(including, without limitation, local, state and federal environmental and natural resource regulations), voter initiative or referenda, moratoria (including, without limitation, any “development moratorium” as that term is applied in Government Code Section 66452.6) or judicial decisions.

11.4 **Extensions.** The Term of this Agreement and the time for performance by OWNER or CITY of any of its obligations hereunder or pursuant to the Project Approvals shall be extended by the period of time that any of the events described in Section 11.3 or this Section 11.4 exist and/or prevent performance of such obligations; provided that, in no event shall any such extension exceed a total of twenty-four (24) months without the prior approval, in their sole and complete discretion, of both OWNER and CITY. Subject to this limit the Term shall be extended for delays arising from the following events for a time equal to the duration of each delay which occurs during the Term.

11.4.1 **Litigation.** The period of time after the Effective Date during which litigation related to the Project Approvals, which has the actual effect of delaying implementation of the Project, is pending, including any litigation pending on the Effective Date. This period shall include any time during which appeals may be filed or are pending.

11.4.2 **Referenda.** Any referendum or petition initiative which would invalidate or delay the implementation of the Project Approvals.

11.4.3 **Government Agencies.** Any delay resulting from the acts or omissions of CITY or any other governmental agency or public utility and beyond the reasonable control of OWNER.

11.5 **Notice of Delay.** Each party shall give notice to the other of any delay that either party believes to have occurred as a result of the occurrence of any of the events described in Section 11.3 or 11.4. Such notice shall be provided as soon as either party becomes aware of any such delay, and in no event shall notice of a delay of any length be given later than sixty (60) days after the end of the delay or it shall be deemed waived.

## 12. **General Provisions.**

12.1 **Binding Covenants.** The provisions of this Agreement, to the extent permitted by law, shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the parties and all successors in interest to the parties hereto.

12.2 **Notices.** All notices required or provided for under this Agreement shall be in writing and either (i) delivered in person; or (ii) sent by certified mail, postage prepaid, return receipt requested; or (iii) sent by independent courier service or overnight delivery service. Notices required to be given to CITY shall be addressed as follows:

City of Orange, City Manager  
300 E. Chapman Avenue  
Orange, CA 92866  
Attn: City Manager

**With a copy to:**

City of Orange  
300 E. Chapman Avenue  
Orange, CA 92866  
Attn: City Attorney

Notices required to be given to OWNER shall be addressed as follows:

Old Town Gateway, LLC  
606 E. Chapman Avenue  
Orange, CA 92866  
Attn: Al Ricci

Any notice given as required herein shall be deemed given only if in writing and upon delivery by one of the methods set forth above. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

12.3 **Attorneys' Fees.** If legal action is brought by either party against the other for breach of this Agreement or to compel performance under this Agreement, the prevailing party shall be entitled to an award of its costs, including reasonable attorneys' fees, and shall also be entitled to recover its contribution for the costs of the referee referred to in Section 10.4 above as an item of damage and/or recoverable costs. If CITY is the prevailing party and uses in-house counsel in the litigation, it shall be entitled to recover attorneys' fees at the hourly rate that OWNER is being charged by its attorney or at the in-house counsel's fully burdened rate, whichever is higher.

12.4 **Recording.** This Agreement and any amendment or cancellation hereto shall be recorded by the City Clerk, in the Official Records of Orange County within ten (10) days after the Effective Date, as provided in Section 65868.5 of the Development Agreement Legislation.

12.5 **Severability of Terms.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to enforce.

12.6 **Rules of Construction and Miscellaneous Terms.**

12.6.1 **Interpretation and Governing Law.** The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. The parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of CITY, and in particular, CITY's police powers.

In this regard, the parties understand and agree that this Agreement shall not be deemed to constitute the surrender or abnegation of CITY's governmental powers over the Property.

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

12.6.3 **Gender.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

12.6.4 **Joint and Several Liability.** If there is more than one signatory to this Agreement, their obligations are joint and several.

12.6.5 **Time of Essence.** Time is of the essence regarding each provision of this Agreement of which time is an element.

12.6.6 **Recitals.** All Recitals set forth herein are incorporated in this Agreement as though fully set forth herein.

12.6.7 **Entire Agreement.** This Agreement together with the Development Plan constitutes the entire agreement between the parties with respect to the subject matter hereof, and the Agreement supersedes all previous negotiations, discussion and agreements between the parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

12.6.8 **Not for Benefit of Third Parties.** This Agreement and all provisions hereof are for the exclusive benefit of CITY and OWNER and its Development Transferees and shall not be construed to benefit or be enforceable by any third party.

### 13. **Effect of Agreement on Title.**

13.1 **Effect on Title.** OWNER and CITY agree that this Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.

#### 13.2 **Encumbrances and Lenders' Rights.**

13.2.1 OWNER and CITY hereby agree that this Agreement shall not prevent or limit any owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at its or their sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust sale and leaseback arrangement or other security device. CITY acknowledges that any Lender (as hereinafter defined) may require certain interpretations of or modifications to the Agreement or the Project and CITY agrees, upon request, from time to time, to meet with the property owner(s) and/or representatives of such Lenders to negotiate in good faith any such request for interpretation or modification. CITY further agrees that it will not unreasonably withhold its consent to any such requested interpretation or modification to the extent such interpretation or modification is consistent with the intent and purpose of this Agreement. A default under this Agreement shall not defeat, render invalid, diminish or impair the lien of any Lender.

13.2.2 The mortgagee of a mortgage, or beneficiary of a deed of trust, or holder of any other security interest in the Property or any portion thereof and their successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale, or a person or entity which obtains title by deed-in-lieu of foreclosures (“Lender”) shall be entitled to receive a copy of any First Default Notice, as defined in Section 10.1, at the name and address Lender has provided to the City Clerk of CITY. As a pre-condition to the institution of any legal proceedings or termination proceedings, CITY shall deliver to all such Lenders written notification of any Second Default Notice. The Second Default Notice shall specify in detail the alleged default and the suggested means to cure it. Each such Lender shall have the right, at its sole option, to cure such default within seventy-five (75) days of receipt of the Second Default Notice or, if such default cannot be reasonably cured within seventy-five (75) days, to commence and diligently pursue a cure of such default, in which case CITY shall not terminate this Agreement or otherwise institute legal proceedings. Within twenty (20) days of receipt of the Second Default Notice, such Lenders shall provide written notice to CITY as to whether such Lender intends to cure the default. If CITY does not receive such notice within twenty (20) days, the Lender shall be deemed to have elected not to cure and CITY may pursue all available remedies provided to it under this Agreement.

**[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 dated below.

Dated: \_\_\_\_\_, 2022

**“CITY”**

THE CITY OF ORANGE,  
a municipal corporation,

By: \_\_\_\_\_  
Mark A. Murphy, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Coleman, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary A. Sheatz, City Attorney

Dated: \_\_\_\_\_, 2022

**“OWNER”**

OLD TOWN GATEWAY, LLC,  
a California limited liability company,

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

**[Notary Acknowledgments Attached]**

**ATTACHMENT 1**

**[Exhibits A and B – Legal Description and Sketch]**





# Agenda Item

## City Council

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**Item #:** 3.10.

12/13/2022

**File #:** 22-0683

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, 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 creating the Neighborhood Preservation Overlay Zone; providing development standards to regulate the addition of bedrooms or bathrooms to a primary residence within specified boundaries; revising or adding definitions pertaining to residential additions and student housing; and updating provisions for reviewing body approval of specified matters. Ordinance No. 10-22.

### 2. SUMMARY

The Introduction and First Reading of the above-entitled Ordinance was approved at an adjourned Regular Council Meeting on November 15, 2022.

The Ordinance is now presented for Second Reading by title only, and adoption.

Vote at First Reading:	AYES:	Murphy, Nichols, Barrios, Dumitru, Tavoularis, Gutierrez
	NOES:	None
	ABSENT:	Monaco

### 3. RECOMMENDED ACTION

Adopt Ordinance No. 10-22.

### 4. ATTACHMENTS

- Ordinance No. 10-22.



# Agenda Item

## City Council

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**Item #:** 3.10.

12/13/2022

**File #:** 22-0683

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Pamela Coleman, City Clerk

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Vote at First Reading:	AYES:	Murphy, Nichols, Barrios, Dumitru, Tavoularis, Gutierrez
	NOES:	None
	ABSENT:	Monaco

### 3. RECOMMENDED ACTION

Adopt Ordinance No. 10-22.

### 4. ATTACHMENTS

- Ordinance No. 10-22.

## **ORDINANCE NO. 10-22**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CREATING THE NEIGHBORHOOD PRESERVATION OVERLAY ZONE; PROVIDING DEVELOPMENT STANDARDS TO REGULATE THE ADDITION OF BEDROOMS OR BATHROOMS TO A PRIMARY RESIDENCE WITHIN SPECIFIED BOUNDARIES; REVISING OR ADDING DEFINITIONS PERTAINING TO RESIDENTIAL ADDITIONS AND STUDENT HOUSING; AND UPDATING PROVISIONS FOR REVIEWING BODY APPROVAL OF SPECIFIED MATTERS**

**WHEREAS**, the City Council of the City of Orange, pursuant to its police powers afforded under the California Constitution, Article XI, Section 7, California Government Code 37100, et seq., may adopt regulations to protect the peace, health, safety and welfare of the community, and may declare that certain uses and conditions constitute a public nuisance; and

**WHEREAS**, California Government Code 38771 authorizes the City, through its legislative body, to declare actions and activities that constitute a public nuisance in its community; and

**WHEREAS**, the City in general, and the neighborhoods in proximity to Chapman University in particular, have experienced a surge of construction activity and new applications for additions to and/or interior renovations to single-family dwellings (primary residences) in which numerous bedrooms and bathrooms are added, many with exterior doors and wet bars in each bedroom, in some cases transforming two or three bedroom homes into seven or eight bedroom and bathroom structures; and

**WHEREAS**, the mansionization of former single-family dwellings has in many cases been promoted as “student housing properties,” with the goal of “creating a student housing assemblage” on specific streets; and

**WHEREAS**, those mansionized single-family dwellings already constructed have caused numerous deleterious effects on the families residing nearby, including parking on front lawns, illegal street parking, unsafe vehicle speed demonstrations, trampled landscaping, loud music, unruly parties, congregation of crowds from outside the neighborhoods in the front yards over and above the number of occupants, confrontational interactions with neighbors, public drinking, late night disturbances, litter including bottles and cups visible to the neighborhood, overflowing trash cans, police responses to resident complaints, party call prosecutions, and what has been described by neighbors as a “fraternity” atmosphere, all of which effects constitute a public nuisance to the community; and

**WHEREAS**, on February 16, 2021, the City Council adopted interim Ordinance No. 02-21, prohibiting the addition of three or more bedrooms or three or more bathrooms to a primary residence use on lots less than 12,000 square feet, and adding or revising certain related definitions; on March 23, 2021, the City Council extended interim Ordinance No. 02-21-A until February 15, 2022; and on February 8, 2022, the City Council extended interim Ordinance No. 02-21-B until February 15, 2023; and

**WHEREAS**, since adoption of the interim Ordinance, the City has reviewed and studied the development standards contained in its Zoning Code to examine under what circumstances and to what extent primary residences may be expanded in the number of bedrooms and number of bathrooms, along with other remodeling development standards, in a manner that does not deteriorate the neighborhood character; and

**WHEREAS**, the City has also studied the required procedure for evaluating applications for the expansion of single-family dwellings to determine the proper level of review required to protect the peace, health, safety and welfare of the neighborhood and the public at large and mitigate the specific adverse impacts; and

**WHEREAS**, the City has also studied the definitions of bedroom, dormitory and student housing to achieve a fair balance between accommodation of property owners' rights and the negative effects of unregulated increases in bedrooms and bathrooms in single-family residential neighborhoods; and

**WHEREAS**, the City has examined the areas within the City where the additional bedrooms and bathrooms have been most prevalent and contributed most of the detrimental effects; and

**WHEREAS**, City staff has determined that an overlay zone applicable to that area of the City most prone to home expansions, and containing specific requirements for the addition of bedrooms and bathrooms, will provide clear and reasonable regulations allowing property owners to expand their residences while ensuring orderly growth and elimination of the known detrimental effects from mansionization; and

**WHEREAS**, at a public hearing held on November 7, 2022, the City of Orange Planning Commission considered proposed Ordinance No. 10-22 and recommended approval of said Ordinance to the City Council; and

**WHEREAS**, Ordinance No. 10-22 is necessary to achieve the goals and policies of the General Plan Land Use Element for balancing economic gains from new development while preserving the character and densities of residential neighborhoods, minimizing effects of new development on the privacy and character of surrounding neighborhoods, preserving historic resources, both individual and cumulatively in neighborhoods, and ensuring contextually appropriate infill development that contributes positively to the quality of the surrounding neighborhood.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I:**

This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to (1) Section 15061(b)(3) of the state CEQA Guidelines (Common Sense Exemption) because it can be seen with certainty that there is no possibility that it would have a significant effect on the environment; and (2) Guideline Section 15378 because it will not have a direct or reasonably foreseeable indirect physical change on the environment and is not a "project." For this reason, no further CEQA documentation is required.

**SECTION II:**

The definition of "BATHROOM" is hereby added to Section 17.04.021 of the Orange Municipal Code, "Zoning – Definitions – "B" Definitions," to read as follows:

BATHROOM, FULL and HALF - A full bathroom contains one bathtub, tub or shower compartment; one water closet or lavatory or other similar approved facilities, and up to two sinks. It includes a compartmented bathroom in which the fixtures are distributed among interconnected rooms. A half-bathroom omits a bathtub, tub, or shower compartment.

**SECTION III:**

The definition of "BEDROOM" in Section 17.04.021 of the Orange Municipal Code, "Zoning – Definitions – "B" Definitions," is hereby revised to read as follows:

BEDROOM - Any habitable room in a dwelling unit other than a bathroom, kitchen, dining room or living room with the following features: an interior door that can be closed or an opening into the room in which an interior door or double door can be easily installed; a window; and a closet or room for a wardrobe in addition to a bed.

**SECTION IV:**

The definition of "DORMITORY" in Section 17.04.023 of the Orange Municipal Code, "Zoning – Definitions – "D" Definitions," is hereby revised to read as follows:

DORMITORY, DORMITORY-STYLE HOUSING, See also STUDENT HOUSING – A structure used for group accommodations, containing a number of private or semiprivate bedrooms with or without a private bathroom, usually with common recreation and kitchen areas, primarily advertised to and exclusively occupied by students of a provider of higher education. A dormitory may be owned or operated by a university, college, or private owner.

**SECTION V:**

The definition of “LIVING AREA, COMMON” is hereby added to Section 17.04.031 of the Orange Municipal Code, “Zoning – Definitions – “L” Definitions,” to read as follows:

LIVING AREA, COMMON - The interior habitable area of a dwelling unit, other than the kitchen, bedrooms, bathrooms, utility rooms, garage, and basement, that is of sufficient size to be shared by all occupants of the dwelling unit with no other specific purpose other than shared gathering area.

**SECTION VI :**

The definition of “OPEN SPACE, USABLE” in Section 17.04.034 of the Orange Municipal Code, “Zoning – Definitions – “O” Definitions,” is hereby revised to read as follows:

OPEN SPACE, USABLE - Any space on a lot not enclosed by buildings and intended for recreation and leisure uses. Usable open space includes yards, courtyards, balconies, decks, porches, and patios but does not include front yard setbacks, driveways, parking spaces or side yards less than eight feet in width. In multiple-family developments, indoor recreation areas may count toward the usable open space requirement.

**SECTION VII:**

The definition of “STUDENT HOUSING” in Section 17.04.038 of the Orange Municipal Code, “Zoning – Definitions – “S” Definitions,” is hereby revised to read as follows:

STUDENT HOUSING, See also DORMITORY, DORMITORY-STYLE HOUSING -- A structure designed, primarily advertised to and exclusively used for long-term stay by students of an educational facility for group accommodations usually with common recreation and kitchen areas, primarily advertised to and exclusively occupied by students of a provider of higher education. This may include a dormitory or fraternity/sorority house or apartment. Student housing may be owned or operated by a university, college, or private owner.

**SECTION VIII:**

Table 17.06.020 of the Orange Municipal Code, “Zoning – Zoning Districts and Map – Districts Established,” is hereby revised to read as follows:

Table 17.06.020

Use District Symbol	Use Classification	Chapter
R1-R	Single Family Residential District	17.14
R1-40	Single-Family Residential District	17.14

R1-20	Single-Family Residential District	17.14
R1-15	Single-Family Residential District	17.14
R1-12	Single-Family Residential District	17.14
R1-10	Single-Family Residential District	17.14
R1-8	Single-Family Residential District	17.14
R1-7	Single-Family Residential District	17.14
R1-6	Single-Family Residential District	17.14
R1-5	Single-Family Residential District	17.14
R2-8	Duplex Residential District	17.14
R2-7	Duplex Residential District	17.14
R2-6	Duplex Residential District	17.14
R-3	Multiple-Family Residential District	17.14
R-4	Multiple-Family Residential District	17.14
MH	Mobile Home Residential District	17.14
OP	Office Professional District	17.18
CP	Commercial Professional District	17.18
C1	Limited Business District	17.18
C-TR	Limited Business District—Tustin Redevelopment Project Area	17.18
C2	General Business District	17.18
C3	Commercial District	17.18
OTMU-15S	Old Towne Mixed Use District - 15S	17.19
OTMU-15	Old Towne Mixed Use District - 15 DU/AC	17.19
OTMU-24	Old Towne Mixed Use District - 24 DU/AC	17.19
NMU-24	Neighborhood Mixed Use District - 24 DU/AC	17.19
UMU	Urban Mixed Use District	17.19
M1	Light Industrial District	17.20
M2	Industrial Manufacturing District	17.20
SG	Sand and Gravel Extraction District	17.32
A-1	Agricultural District	17.22
RO	Recreation Open Space District	17.22
SH	Slope Hazard District	17.22
PI	Public Institution District	17.24
PC	Planned Community District	17.26
FP	Flood Plain Overlay District	17.28
A	Single-Story Overlay District	17.28
E	Equestrian Overlay District	17.28
P	Parking Overlay District	17.28
NP	Neighborhood Preservation Overlay District	17.28
PUD	Planned Unit Development District	17.16

## **SECTION IX:**

Table 17.08.020 of the Orange Municipal Code, “Zoning – General Administrative Procedures – Reviewing Bodies,” is hereby revised to add the following:

**Table 17.08.020**

<b>Type of Procedure, Permit or Hearing</b>	<b>CDD</b>	<b>DRC</b>	<b>ZA</b>	<b>PC</b>	<b>CC</b>
Neighborhood Preservation Overlay Applications		A/X(1)	X(1)		

## **SECTION X:**

Subsections 17.08.020.D.2(f) and (g) are hereby added to Section 17.08.020 of the Orange Municipal Code, “Zoning – General Administrative Procedures – Reviewing Bodies – Design Review Committee – Powers and Duties,” to read as follows:

f. Make final determination on design review of applications for additional bedrooms or bathrooms in a historic district pursuant to Section 17.28.080.D.1.a.

g. Review and make recommendations to the Zoning Administrator on applications for additional bedrooms or bathrooms in a historic district pursuant to Section 17.28.080.D.1.b.

## **SECTION XI:**

Subsections 17.08.020.E.1 of the Orange Municipal Code, “Zoning – General Administrative Procedures – Reviewing Bodies – Community Development Director – Powers and Duties,” is hereby revised to read as follows:

1. Powers and Duties. The Community Development Director, after consultation with appropriate staff as determined by the Director, shall have the authority to:

## **SECTION XII:**

Subsections 17.08.020.E.1(i) through (m) are hereby added to Section 17.08.020 of the Orange Municipal Code, “Zoning – General Administrative Procedures – Reviewing Bodies – Community Development Director – Powers and Duties,” to read as follows:

i. Decide upon the conformity of unlisted uses to the zoning district and similar uses pursuant to Section 17.13.070.

j. Decide upon applications to install walls and fences within 5 feet of one another pursuant to Section 17.12.070.A.1.a.

k. Decide upon Neighborhood Preservation Overlay District applications pursuant to Section 17.28.080.C.



l. Decide upon deviations from required number of parking spaces for nonresidential land uses pursuant to Section 17.34.060.

m. Decide upon parking requirements for uses not specified pursuant to Section 17.34.070.

**SECTION XIII:**

Section 17.14.280 is hereby added to the Orange Municipal Code, “Zoning – Residential Districts – Bedrooms,” to read as follows:

**17.14.280 Bedrooms**

A bedroom may not contain facilities for a sink, refrigerator or microwave, a kitchenette, or infrastructure that can be easily converted to a kitchenette, e.g., GFCI outlets. Unless otherwise approved by the Community Development Director or designee, a bedroom may not have a door directly to the outside or contain a wet bar.

**SECTION XIV:**

The chart in Section 17.28.030 of the Orange Municipal Code, “Zoning – Overlay Districts – Denotation of Overlay Districts,” is hereby revised to read as follows:

<b>District</b>	<b>Symbol</b>
Flood Plain 1	FP-1
Flood Plain 2	FP-2
Single Story	A
Equestrian	E
Parking	P
Neighborhood Preservation	NP

**SECTION XV:**

Section 17.28.080 is hereby added to the Orange Municipal Code, “Zoning – Overlay Districts – Neighborhood Preservation Overlay District,” to read as follows:

**17.28.080 Neighborhood Preservation Overlay**

A. Purpose and Intent. The purpose of the Neighborhood Preservation (NP) Overlay District is to provide regulations to control surges in construction of new additions and interior

renovations to primary residences concentrated in the overlay district that become multiple tenant rental properties and that result in adverse impacts to single-family neighborhoods.

B. Application. The Neighborhood Preservation Overlay District is the area bounded by Katella Avenue to the north, Main Street to the west, the SR-55 Freeway to the east, and the City’s boundaries along the SR-22 Freeway to the south. The overlay district is established on the City of Orange Zoning Map.

C. Overlay Development Standards – Ministerial Approval. Project applications from existing primary residences in the overlay district that add bedrooms or bathrooms in compliance with the City of Orange Infill Residential Design Guidelines and the following overlay development standards, shall be approved ministerially by the Community Development Director or designee.

1. A maximum of two bedrooms may be constructed onto and/or and added within a primary residence by reconfiguring existing space. For purposes of calculating allowable additional bedrooms, the number of bedrooms existing as of January 1, 2023, shall be considered the baseline.

2. A maximum of two bathrooms, including half-bathrooms, may be constructed onto and/or added to a primary residence by reconfiguring existing space. For purposes of calculating allowable additional bathrooms, the number of bathrooms existing as of January 1, 2023, shall be considered the baseline.

3. A minimum of 100 square feet of additional usable open space beyond that required by Orange Municipal Code Table 17.14.070 must be provided for each additional bedroom being proposed to the existing primary residence.

4. A minimum of 100 square feet of additional common living area must be provided for each additional bedroom being proposed to the existing primary residence. Dwelling units that maintain a minimum of 800 square feet of common living area are exempt from the requirement.

5. A minimum of 50 cubic feet of additional unified indoor storage area must be provided for each additional bedroom being proposed to the existing primary residence. Such storage area must be in addition to cabinets and closets typically found within a dwelling unit such as bedroom closets, linen closets, or kitchen cabinets.

6. In any single-family residential district, the addition of one or two new bedrooms must comply with the following floor area ratio (FAR) standards.

<b><u>Lot Area (sf)</u></b>	<b><u>Max FAR</u></b>	<b><u>Max FAR for One New Bedroom</u></b>	<b><u>Max FAR for Two New Bedrooms</u></b>
<10,000	0.60	0.55	0.50
10,000-12,000	0.50	0.45	0.40

7. Project applications involving exterior modifications to primary residences located in a historic district shall also be subject to design review by the Design Review Committee.

D. Approval Process. Applications from existing primary residences in the overlay district that add bedrooms or bathrooms not in compliance with the overlay development standards set forth in Subsection C, and/or that are located in a historic district shall be subject to the following approval procedures:

1. Historic District Approval. An application for additional bedrooms, bathrooms and other related improvements that involves new square footage or exterior modifications (other than roof vents), shall be subject to the design review process as follows:

a. When the property is located in a historic district but the application is otherwise in compliance with the overlay development standards contained in subsection C, the Design Review Committee shall have the final authority to review and approve the project.

b. When the property is located in a historic district but the application is not in compliance with the overlay development standards contained in subsection C, the Design Review Committee shall have the authority to review and make a recommendation to the Zoning Administrator on the design of the proposed project. The Zoning Administrator shall have the final authority to review and approve the project.

2. Approval – Not in a Historic District. When the proposal is not in compliance with the overlay development standards contained in subsection C, the Zoning Administrator shall have the final authority to review and approve the project.

3. Zoning Administrator Approval - Considerations. In approving an application for additional bedrooms, bathrooms, and/or other related improvements not in compliance with the overlay development standards contained in subsection C, the Zoning Administrator shall consider the following:

a. The proposal will preserve the public peace, health, safety, and welfare within those areas that neighbor the affected residence and other surrounding areas within the Neighborhood Preservation Overlay District.

b. The size and design of the proposal will minimize the likelihood of excessive disturbances or unruly behavior such as parking on front lawns, illegal street parking, congregation of crowds in the front yards over and above the number of occupants, and other public nuisances to the community.

c. The proposal will comply with those standards and requirements described in this Section and the entirety of Title 17 of this code.

4. Appeals. Final decisions of the Community Development Director, Design Review Committee or Zoning Administrator may be appealed to the Planning Commission pursuant to Section 17.08.050.E.

E. The Community Development Director, Design Review Committee or Zoning Administrator may refer an application for which it may render a final decision to the Planning Commission for a final decision. The Planning Commission shall be subject to those approval considerations set forth in subsection D.3.

#### **SECTION XVI:**

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 XVII:**

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause a summary of 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.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

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Mark A. Murphy, Mayor, City of Orange

**ATTEST:**

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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 15th day of November, 2022, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_ day of \_\_\_\_\_, 2022, 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

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**Item #:** 3.11.

12/13/2022

**File #:** 22-0684

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**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, 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 amending various sections of the Orange Municipal Code to delete outdated language, update references to conform with current law and code provisions, and achieve internal consistency. Ordinance No. 09-22.

### 2. SUMMARY

The Introduction and First Reading of the above-entitled Ordinance was approved at an adjourned Regular Council Meeting on November 15, 2022.

The Ordinance is now presented for Second Reading by title only, and adoption.

Vote at First Reading:	AYES:	Murphy, Nichols, Barrios, Dumitru, Tavoularis, Gutierrez,
	NOES:	None
	ABSENT:	Monaco

### 3. RECOMMENDED ACTION

Adopt Ordinance No. 09-22.

### 4. ATTACHMENTS

- Ordinance No. 09-22.



**Item #: 3.11.**

12/13/2022

**File #:** 22-0684

**TO: Honorable Mayor and Members of the City Council**

**THRU: Tom Kisela, 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 amending various sections of the Orange Municipal Code to delete outdated language, update references to conform with current law and code provisions, and achieve internal consistency. Ordinance No. 09-22.

## 2. SUMMARY

The Introduction and First Reading of the above-entitled Ordinance was approved at an adjourned Regular Council Meeting on November 15, 2022.

The Ordinance is now presented for Second Reading by title only, and adoption.

Vote at First Reading: AYES: Murphy, Nichols, Barrios, Dumitru, Tavoularis, Gutierrez,  
NOES: None  
ABSENT: Monaco

### 3. RECOMMENDED ACTION

Adopt Ordinance No. 09-22.

#### 4. ATTACHMENTS

- Ordinance No. 09-22.

## **ORDINANCE NO. 09-22**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING VARIOUS SECTIONS OF THE ORANGE MUNICIPAL CODE TO DELETE OUTDATED LANGUAGE, UPDATE REFERENCES TO CONFORM WITH CURRENT LAW AND CODE PROVISIONS, AND ACHIEVE INTERNAL CONSISTENCY**

**THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:**

#### **SECTION I:**

1. The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines (Guidelines) Sections 15060(c)(2) and 15060(c)(3) because review and evaluation of potential impact of the Ordinance demonstrate that it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not a "project" as defined in Guideline 15378.

2. The subject Ordinance is exempt from CEQA per Guideline 15061(b)(3) because it can be seen with certainty, after review and evaluation of the facts regarding the Zoning Code administrative amendments, that there is substantial evidence that adoption of this Ordinance would not have a significant effect on the environment and the common sense exemption applies.

#### **SECTION II:**

Section 2.64.040 of the Orange Municipal Code, "Administration and Personnel – Planning Commission – Meetings," is hereby revised to read as follows:

##### **2.64.040 Meetings.**

The regular meetings of the Planning Commission shall be held in the Council Chambers, Civic Center, 300 East Chapman Avenue, Orange, California, or at such other place as may be designated by the Planning Commission, on the first and third Monday of each month and shall convene at the hour of 7:00 P.M. In the event any such Monday is a legal holiday, such meeting shall be held the following Thursday, at the hour of 7:00 P.M.

#### **SECTION III:**

Section 5.63.010 of the Orange Municipal Code, "Business Taxes and Regulations – Plaza Banners - Definitions," is hereby revised to read as follows:



A. **PLAZA BANNER:** means any pennant, streamer, flag, sign, picture, figure or other object regardless of the material of which it is made, which is suspended or otherwise displayed over any public street, way, or place, designed for decoration or non-profit advertisement, or to attract the attention of passersby; except, however, official warning devices, or public service or safety facilities. The term shall not include signs and billboards, the installation and maintenance of which are regulated by Chapter 17.36 of this code.

#### **SECTION IV:**

Section 5.76.020.A of the Orange Municipal Code, “Business Taxes and Regulations – Tow Trucks – Permit-Required,” is hereby revised to read as follows:

A. No person shall operate any tow truck business within the City without obtaining a proper permit therefor, as provided in this chapter.

#### **SECTION V:**

Section 16.60.100.C of the Orange Municipal Code, “Subdivisions – Park Dedications and Fees – Exemptions,” is hereby revised to read as follows:

C. In order to ensure that the imposition of fees pursuant to this chapter will not be contrary to the public interest, or prevent the development of a public service project, the City Council may waive all, or any portion of, the fees required by this chapter if the City Council finds that a subdivision will serve a public purpose or satisfy a public need and is located within a redevelopment project area, or other special district, or involves direct City of Orange participation in the residential development project. Moreover, the City Council may, from time to time, and as the need may arise, set forth, by resolution, specific limitations, which will apply to waivers of fees which may be made pursuant to this section. In this regard, this chapter shall be considered enabling and directory.

#### **SECTION VI:**

The headings of Table 17.08.040 the Orange Municipal Code, “Zoning – General Administrative Procedures – Notice of Hearings - General,” is revised to read as follows:

<b>Type of Procedure, Permit or Hearing</b>	<b>Mail to Surrounding Property Owners</b>	<b>Publication and/or Posting</b>	<b>Other</b>
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#### **SECTION VII:**

Section 17.10.040.D.2.a of the Orange Municipal Code, “Zoning – Specific Administrative Procedures – Variances – Variances Reviewed by Zoning Administrator,” is hereby revised to read as follows:

a. Building setback and yard requirements for new residential development on a lot that is vacant or previous development is razed to accommodate new development;

## **SECTION VIII:**

Section 17.12.070.D.1.a of the Orange Municipal Code, “Zoning – General Regulations Applicable to All Districts – Fences and Walls – Commercial – Division Wall Required,” is hereby revised to read as follows:

a. A masonry division wall at least eight feet in height as measured from the highest elevation of land contiguous to the fence, and not greater than ten feet in height as measured from the lowest elevation contiguous to the fence, shall be constructed on all property lines adjacent to any residential district, except in a street-facing, front, side, or rear yard setback where the wall shall be limited to forty-two (42) inches in height. Division wall height less than eight feet or taller than ten feet as measured from the lowest elevation contiguous to the wall may be considered by the Community Development Director.

## **SECTION IX:**

Section 17.13.040.JJ.4.c(i), “Zoning – Master Land Use Table – Special Use Regulations – Homeless Shelter,” is hereby revised to read as follows:

i. The facility shall establish and enforce a strict code of conduct. Facility rules shall prohibit weapons and the use, sale or distribution of alcohol or illegal drugs.

## **SECTION X:**

Section 17.14.230 of the Orange Municipal Code, “Zoning – Residential Districts – Trash Enclosures,” is hereby revised to read as follows:

### **17.14.230 Solid Waste Collection Areas.**

All multiple-family residential and mobile home park developments comprised of five or more units shall provide solid waste collection areas adequately and conveniently placed throughout the development. Solid waste collection areas include solid waste enclosures which shall meet or exceed the Department of Public Works standard for solid waste enclosures. The Public Works Director (or designee) may adjust or waive these requirements. Compliance with AB 827 is required, which includes providing source-separated receptacles for residents.

## **SECTION XI:**

Section 17.15.030.C.5 of the Orange Municipal Code, “Zoning – Density Bonus – Projects Eligible for Density Bonus – Donations of Land,” is hereby revised to read as follows:

5. The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

## **SECTION XII:**

Section 17.15.070.C.2.d of the Orange Municipal Code, “Zoning – Density Bonus – Density Bonus Housing Agreement – Maximum Allowable Rent or Sales Price – Ownership Projects – Sale Clause,” is hereby revised to read as follows:

d. Sale Clause. The Density Bonus Housing Agreement shall stipulate that, when the terms of affordability have expired on an affordable unit, the City and/or a non-profit housing organization shall have a first right of purchase option sixty (60) days prior to the affordable unit being advertised on the market.

### **SECTION XIII:**

Section 17.18.190 of the Orange Municipal Code, “Zoning – Commercial Districts – Trash Enclosures,” is hereby revised to read as follows:

#### **17.18.190 Solid Waste Collection Areas.**

All commercial developments shall provide solid waste collection areas adequately and conveniently placed throughout the development. Solid waste collection areas include solid waste enclosures which shall meet or exceed the Department of Public Works standard for solid waste enclosures. The Public Works Director (or designee) may adjust or waive these requirements. Compliance with AB 827 is required, which includes providing source-separated receptacles for customers.

### **SECTION XIV:**

Section 17.19.080.H of the Orange Municipal Code, “Zoning – Mixed Use Districts – Mixed Use Development – Trash and Recycling Enclosures,” is hereby revised to read as follows:

#### **H. Solid Waste Enclosures.**

1. Solid waste enclosures for nonresidential uses shall be located as far as possible from residential units and shall be completely screened from view from the residential portion of the project and public right of way. Solid Waste collection areas shall meet or exceed the Department of Public Works standard for solid waste enclosures. The Public Works Director (or designee) may adjust or waive these requirements.

2. Trash and recycling storage facilities shall be integrated into and be compatible with the architectural design and details with the overall project.

3. The location and design of solid waste enclosures shall mitigate nuisances from noise and odors.

## **SECTION XV:**

Section 17.19.190 of the Orange Municipal Code, “Zoning – Mixed Use Districts – Trash Enclosures,” is hereby revised to read as follows:

### **17.19.190 Solid Waste Collection Areas.**

All developments shall provide solid waste collection areas adequately and conveniently placed throughout the development. Solid waste collection areas include solid waste enclosures which shall meet or exceed the Department of Public Works standard for solid waste enclosures. The Public Works Director (or designee) may adjust or waive these requirements. Compliance with AB 827 is required, which includes providing source-separated receptacles for residents or customers.

## **SECTION XVI:**

Section 17.20.150 of the Orange Municipal Code, “Zoning – Industrial Districts – Trash Enclosures,” is hereby revised to read as follows:

### **17.20.150 Solid Waste Collection Areas.**

All developments shall provide solid waste collection areas adequately and conveniently placed throughout the development. Solid waste collection areas include solid waste enclosures which shall meet or exceed the Department of Public Works standard for solid waste enclosures. The Public Works Director (or designee) may adjust or waive these requirements. Compliance with AB 827 is required.

## **SECTION XVII:**

Section 17.29.080.C.1 of the Orange Municipal Code, “Zoning – Accessory Dwelling Units and Junior Accessory Dwelling Units – ADU Setbacks,” is hereby revised to read as follows:

1. Side and rear setbacks of the zoning district shall apply for any ADU in excess of 800 square feet.

## **SECTION XVIII:**

Section 17.36.150.H of the Orange Municipal Code, “Zoning – Sign Regulations – Special Purpose Sign Regulations – Decorative Banners,” is hereby revised to read as follows:

H. Decorative Banners. Decorative banners shall be permitted only in commercial or industrial districts and only as part of a sign program developed and sponsored by the City and approved by the Community Development Director (or designee), in which case such public bodies shall be exempt from the payment of any permit fee. Written approval from the property owner (or authorized agent) of the utility poles or street light standards to be used for the display of decorative banners shall be required as a condition to the approval of the sign program. Decorative banners shall not identify any individual business or tenant name and shall not contain

written advertising copy. Decorative banners may be located no lower than fourteen (14) feet above grade and must enhance the subject commercial or industrial district such that the colors, logos, materials and design of the decorative banners are appropriate to the district in which the decorative banners are to be installed.

#### **SECTION XIX:**

Section 17.44.110 of the Orange Municipal Code, “Zoning – Development Agreements – Recommendation of Orange Redevelopment Agency,” is hereby deleted in its entirety.

#### **SECTION XX:**

Section 17.44.120 of the Orange Municipal Code, “Zoning – Development Agreements – Hearing by City Council,” is hereby revised to read as follows:

##### **17.44.120 Hearing by City Council.**

After the recommendation of the Planning Commission or after the expiration of the time period specified in Section 17.44.100, the Director shall give notice of a public hearing before the City Council in the manner provided for in Sections 17.44.070 and 17.44.080.

#### **SECTION XXI:**

Section 17.44.130.A of the Orange Municipal Code, “Zoning – Development Agreements – Decision by City Council,” is hereby revised to read as follows:

A. After it completes the public hearing and considers the recommendation, if any, of the Planning Commission, the City Council may accept, modify, or deny the proposed development agreement. It may, but need not, refer the matters not previously considered by the Planning Commission during its hearing, back to the Planning Commission, who shall not be required to hold a public hearing on matters referred back to it by the City Council.

#### **SECTION XXII:**

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 XXIII:**

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 \_\_\_\_\_, 2022.

\_\_\_\_\_  
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 15th day of November, 2022, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_ day of \_\_\_\_\_, 2022 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 #: 3.12.

12/13/2022

File #: 22-0701

**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Susan Galvan, Assistant City Manager

### 1. SUBJECT

Recognized Obligation Payment Schedule for the fiscal period covering July 1, 2023 through June 30, 2024 (ROPS 23-24). Resolution No. SAORA-036.

### 2. SUMMARY

Approve the Recognized Obligation Payment Schedule (ROPS) 23-24 and related Administrative Budgets for the period covering July 1, 2023, through June 30, 2024, and authorize the transmittal of ROPS 23-24 to the Orange Countywide Oversight Board.

### 3. RECOMMENDED ACTION

1. Adopt Resolution No. SAORA-036. A Resolution of the Governing Board of the Successor Agency to the Orange Redevelopment Agency approving a Recognized Obligation Payment Schedule for the fiscal period covering July 1, 2023, through June 30, 2024 (ROPS 23-24), pursuant to Health and Safety Code Section 34177, and taking certain related actions.
2. Direct staff to transmit ROPS 23-24 and related Administrative Budgets to the Orange Countywide Oversight Board of the Successor Agency to the Orange Redevelopment Agency.

### 4. FISCAL IMPACT

The preparation and submittal of the ROPS 23-24 allows the Successor Agency to pay its enforceable obligations for the period from July 1, 2023, through June 30, 2024. Items listed on the ROPS 23-24 will be included in the City's Fiscal Year 23-24 Annual Budget. The ROPS 23-24 shall become operative after it is approved by the Orange Countywide Oversight Board and the State of California Department of Finance.

### 5. STRATEGIC PLAN GOALS

- Goal 2: Be a fiscally healthy community
- a: Expend fiscal resources responsibly.

### 6. DISCUSSION AND BACKGROUND

With the dissolution of the Orange Redevelopment Agency (Agency) effective January 31, 2012, the City Council adopted Resolution No. 10625 authorizing the City to become the Successor Agency for the former redevelopment agency and enabling the City to fulfil the continued expenses of the Agency. A significant majority of Recognized Obligation Payment Schedule (ROPS) expenses are outstanding Agency bonds that are scheduled to be paid twice a year until they mature in the years

ranging from 2023 - 2036.

Assembly Bill 113 (AB 113) provided additional amendments to obligations and deadlines for redevelopment wind-down activities, including specific language in Health and Safety Code (HSC) Section 34177(o)(1) with regard to preparation and approval of Annual ROPS covering the period of July 1 to June 30. The Annual ROPS lists all legally binding and enforceable agreements or contracts of the former Agency for each fiscal-year period, including those necessary for the continued administration of the Successor Agency to wind down the former Agency.

The State Department of Finance (DOF) requires submission of the Annual ROPS through the web-based application called the Redevelopment Agency Dissolution Web Application (RAD), first established in 2013. This Annual ROPS covers the period July 1, 2023 to June 30, 2024 (ROPS 23-24). It is comprised of the following four forms:

- 1) Summary Report: This form summarizes funding totals carried forward from the ROPS Detail Form by funding source and reports the Current Period Funding for Enforceable Obligations of ROPS 23-24A and 23-24B in separate columns;
- 2) ROPS Detail Form: This form lists the Agency's outstanding obligations, debts, and payments due for ROPS A and B separately by fund source;
- 3) Report of Cash Balances Form: This form requires the Successor Agency to report all cash balances for each funding source in accordance with HSC section 34177(l), and;
- 4) Notes Form: The completion of this form is optional and available to the Successor Agency to provide additional information associated with the ROPS Detail Form.

### Overview of ROPS 23-24

Following the RAD process for ROPS 23-24, the estimated Redevelopment Property Tax Trust Fund (RPTTF) to be disbursed is \$4,021,006 subject to approval of the Orange Countywide Oversight Board and the DOF.

Proposed ROPS 23-24	Amount Requested	Administrative Budget	Estimated RPTTF Disbursement Amount
RPTTF	\$3,962,506	\$58,500	\$4,021,006

Along with preparing the Annual ROPS, the Successor Agency is required to prepare administrative budgets for the six-month fiscal periods from July 1, 2023 through December 31, 2023 and from January 1, 2024 through June 30, 2024. The proposed Administrative Budgets shall include estimated amounts for Successor Agency administrative costs that are to be paid from property tax revenues deposited in the RPTTF.

### Deadline to submit ROPS 23-24

To comply with AB 113 and the upcoming February 1, 2023 deadline, it is recommended the Successor Agency approve ROPS 23-24 and the related Administrative Budget and transmit these documents to the Orange Countywide Oversight Board for approval. The DOF has indicated late ROPS submissions will be subject to penalties set forth in Health and Safety Code 34177(o)(1). The penalty affects the entity that created the redevelopment agency which is subject to a penalty in an amount equal to \$10,000 per day for every day the ROPS is not submitted to the DOF.



## 7. ATTACHMENTS

- Resolution No. SAORA-036



# Agenda Item

## City Council

Item #: 3.12.

12/13/2022

File #: 22-0701

**TO:** Honorable Mayor and Members of the City Council

**THRU:** Tom Kisela, Interim City Manager

**FROM:** Susan Galvan, Assistant City Manager

### 1. SUBJECT

Recognized Obligation Payment Schedule for the fiscal period covering July 1, 2023 through June 30, 2024 (ROPS 23-24). Resolution No. SAORA-036.

### 2. SUMMARY

Approve the Recognized Obligation Payment Schedule (ROPS) 23-24 and related Administrative Budgets for the period covering July 1, 2023, through June 30, 2024, and authorize the transmittal of ROPS 23-24 to the Orange Countywide Oversight Board.

### 3. RECOMMENDED ACTION

1. Adopt Resolution No. SAORA-036. A Resolution of the Governing Board of the Successor Agency to the Orange Redevelopment Agency approving a Recognized Obligation Payment Schedule for the fiscal period covering July 1, 2023, through June 30, 2024 (ROPS 23-24), pursuant to Health and Safety Code Section 34177, and taking certain related actions.
2. Direct staff to transmit ROPS 23-24 and related Administrative Budgets to the Orange Countywide Oversight Board of the Successor Agency to the Orange Redevelopment Agency.

### 4. FISCAL IMPACT

The preparation and submittal of the ROPS 23-24 allows the Successor Agency to pay its enforceable obligations for the period from July 1, 2023, through June 30, 2024. Items listed on the ROPS 23-24 will be included in the City's Fiscal Year 23-24 Annual Budget. The ROPS 23-24 shall become operative after it is approved by the Orange Countywide Oversight Board and the State of California Department of Finance.

### 5. STRATEGIC PLAN GOALS

- Goal 2: Be a fiscally healthy community
- a: Expend fiscal resources responsibly.

### 6. DISCUSSION AND BACKGROUND

With the dissolution of the Orange Redevelopment Agency (Agency) effective January 31, 2012, the City Council adopted Resolution No. 10625 authorizing the City to become the Successor Agency for the former redevelopment agency and enabling the City to fulfil the continued expenses of the Agency. A significant majority of Recognized Obligation Payment Schedule (ROPS) expenses are outstanding Agency bonds that are scheduled to be paid twice a year until they mature in the years

ranging from 2023 - 2036.

Assembly Bill 113 (AB 113) provided additional amendments to obligations and deadlines for redevelopment wind-down activities, including specific language in Health and Safety Code (HSC) Section 34177(o)(1) with regard to preparation and approval of Annual ROPS covering the period of July 1 to June 30. The Annual ROPS lists all legally binding and enforceable agreements or contracts of the former Agency for each fiscal-year period, including those necessary for the continued administration of the Successor Agency to wind down the former Agency.

The State Department of Finance (DOF) requires submission of the Annual ROPS through the web-based application called the Redevelopment Agency Dissolution Web Application (RAD), first established in 2013. This Annual ROPS covers the period July 1, 2023 to June 30, 2024 (ROPS 23-24). It is comprised of the following four forms:

- 1) Summary Report: This form summarizes funding totals carried forward from the ROPS Detail Form by funding source and reports the Current Period Funding for Enforceable Obligations of ROPS 23-24A and 23-24B in separate columns;
- 2) ROPS Detail Form: This form lists the Agency's outstanding obligations, debts, and payments due for ROPS A and B separately by fund source;
- 3) Report of Cash Balances Form: This form requires the Successor Agency to report all cash balances for each funding source in accordance with HSC section 34177(l), and;
- 4) Notes Form: The completion of this form is optional and available to the Successor Agency to provide additional information associated with the ROPS Detail Form.

### Overview of ROPS 23-24

Following the RAD process for ROPS 23-24, the estimated Redevelopment Property Tax Trust Fund (RPTTF) to be disbursed is \$4,021,006 subject to approval of the Orange Countywide Oversight Board and the DOF.

Proposed ROPS 23-24	Amount Requested	Administrative Budget	Estimated RPTTF Disbursement Amount
RPTTF	\$3,962,506	\$58,500	\$4,021,006

Along with preparing the Annual ROPS, the Successor Agency is required to prepare administrative budgets for the six-month fiscal periods from July 1, 2023 through December 31, 2023 and from January 1, 2024 through June 30, 2024. The proposed Administrative Budgets shall include estimated amounts for Successor Agency administrative costs that are to be paid from property tax revenues deposited in the RPTTF.

### Deadline to submit ROPS 23-24

To comply with AB 113 and the upcoming February 1, 2023 deadline, it is recommended the Successor Agency approve ROPS 23-24 and the related Administrative Budget and transmit these documents to the Orange Countywide Oversight Board for approval. The DOF has indicated late ROPS submissions will be subject to penalties set forth in Health and Safety Code 34177(o)(1). The penalty affects the entity that created the redevelopment agency which is subject to a penalty in an amount equal to \$10,000 per day for every day the ROPS is not submitted to the DOF.

## 7. ATTACHMENTS

- Resolution No. SAORA-036

## **RESOLUTION NO. SAORA- 036**

### **A RESOLUTION OF THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE ORANGE REDEVELOPMENT AGENCY APPROVING A RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE FISCAL PERIOD FROM JULY 1, 2023 THROUGH JUNE 30, 2024, PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177 AND TAKING CERTAIN RELATED ACTIONS**

**WHEREAS**, pursuant to Health and Safety Code Section 34177(o), the Successor Agency to the Orange Redevelopment Agency (the Successor Agency) must prepare a Recognized Obligation Payment Schedule listing the anticipated payments for enforceable obligations to be made by the Successor Agency during the fiscal period from July 1, 2023 through June 30, 2024 (ROPS 23-24) and submit ROPS 23-24 to the oversight board of the Successor Agency (the Oversight Board) for approval; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(1)(2)(B), at the same time that the Successor Agency submits ROPS 23-24 to the Oversight Board for approval, the Successor Agency must submit a copy of such ROPS 23-24 to the State Department of Finance (the DOF), the County administrative officer, and the County Auditor-Controller; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(1)(2) and Section 34177(o)(1), the Successor Agency must: (i) submit the Oversight Board-approved ROPS 23-24 to the DOF, the Office of the State Controller, and the County Auditor-Controller no later than February 1, 2023, and (ii) post a copy of the Oversight Board-approved ROPS 23-24 on the Successor Agency's website;

**NOW THEREFORE, the Governing Board of the Successor Agency to the Orange Redevelopment Agency does hereby find, determine, resolve, and order as follows:**

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. ROPS 23-24, substantially in the form attached hereto as Exhibit A, is hereby approved. The Executive Director of the Successor Agency, in consultation with the Successor Agency's legal counsel, may modify ROPS 23-24 as the Executive Director or the Successor Agency's legal counsel deems necessary or advisable.

Section 3. Staff is hereby authorized and directed to submit a copy of ROPS 23-24 to the Oversight Board for approval and, at the same time, transmit a copy of ROPS 23-24 to the DOF, the County Auditor-Controller and the County administrative officer as designated by the County.

Section 4. Staff is hereby authorized and directed to submit a copy of Oversight Board-approved ROPS 23-24 to the DOF, the Office of the State Controller, and the County Auditor-Controller. If the Oversight Board has not approved ROPS 23-24 by February 1, 2023, Staff is hereby authorized and directed to transmit ROPS 23-24 to the DOF, the Office of the State Controller, and the County Auditor-Controller by February 1, 2023, with a written notification regarding the status of the Oversight Board's review. Written notice and information regarding the action of the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing.

Section 5. Staff is hereby authorized and directed to post a copy of the Oversight Board-approved ROPS 23-24 on the Successor Agency's Internet website (being a page on the Internet website of the City of Orange).

Section 6. The officers and other Staff members of the Successor Agency are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable to effectuate this Resolution, including but not limited to requesting additional review by the DOF and an opportunity to meet and confer on any disputed items, and making adjustments to ROPS 23-24 pursuant to the DOF's instructions, and any such actions previously taken are hereby ratified and confirmed.

**PASSED AND ADOPTED** this \_\_\_\_ day of December, 2022.

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Mark A. Murphy  
Chairperson of the Successor Agency

**ATTEST:**

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Pamela Coleman  
Clerk of the Successor Agency  
to the Orange Redevelopment Agency

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

I hereby certify that the foregoing Resolution was duly and regularly adopted by Governing Board of the Successor Agency to the Orange Redevelopment Agency at a regular meeting thereof held on the \_\_\_\_ day of December, 2022, by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:
ABSTAIN:	BOARD MEMBERS:

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Pamela Coleman  
Clerk of the Successor Agency  
to the Orange Redevelopment Agency

**EXHIBIT A**

**SUCCESSOR AGENCY TO THE ORANGE REDEVELOPMENT AGENCY  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE  
(July 1, 2023 – June 30, 2024)**

## Recognized Obligation Payment Schedule (ROPS 23-24) - Summary

Filed for the July 1, 2023 through June 30, 2024 Period

**Successor Agency:** Orange City

**County:** Orange

**Current Period Requested Funding for Enforceable Obligations (ROPS Detail)**

**23-24A Total  
(July - December)**

**23-24B Total  
(January - June)**

**ROPS 23-24  
Total**

<b>A Enforceable Obligations Funded as Follows (B+C+D)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	-	-	-
<b>E Redevelopment Property Tax Trust Fund (RPTTF) (F+G)</b>	<b>\$ 2,832,956</b>	<b>\$ 1,188,050</b>	<b>\$ 4,021,006</b>
F RPTTF	2,803,706	1,158,800	3,962,506
G Administrative RPTTF	29,250	29,250	58,500
<b>H Current Period Enforceable Obligations (A+E)</b>	<b>\$ 2,832,956</b>	<b>\$ 1,188,050</b>	<b>\$ 4,021,006</b>

Certification of Oversight Board Chairman:

Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the aboved named successor agency.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



Orange City  
Recognized Obligation Payment Schedule (ROPS 23-24) - ROPS Detail  
July 1, 2023 through June 30, 2024

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Debt or Obligation	Retired	ROPS 23-24 Total	ROPS 23-24A (Jul - Dec)					23-24A Total	ROPS 23-24B (Jan - Jun)					23-24B Total	
											Fund Sources						Fund Sources						
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		
								174,165	Y	\$ 4,021,006	\$ -	\$ -	\$ -	\$ 2,803,706	\$ 29,250	\$ 2,832,956	\$ -	\$ -	\$ -	\$ -	\$ 1,158,800	\$ 29,250	\$ 1,188,050
2	2008 A&B and 2014A Bonds	Fees	6/1/1997	9/1/2037	US Bank	Fiscal agent fees	Orange Merged			\$ -						\$ -						\$ -	
3	2008 A&B and 2014A Bonds	Fees	6/1/1997	9/1/2037	Willdan	Bond disclosure fee	Orange Merged	172,450	Y	\$ -						\$ -						\$ -	
4	2008 A&B and 2014A Bonds	Fees	5/22/2012	9/1/2037	Richards, Watson & Gershon	Bond counsel	Orange Merged	11,500	N	\$ 2,000					1,000	\$ 1,000					1,000	\$ 1,000	
8	Orange City Mills	Business Incentive Agreements	9/10/1996	1/20/2019	Mills Limited Partnership	Promissory note based on performance	Orange Merged	0	Y	\$ -						\$ -						\$ -	
49	Retirement Cost Obligation	Unfunded Liabilities	8/16/1983	7/5/2039	Cal PERS	Future retirement cost obligation	Orange Merged		Y	\$ -						\$ -						\$ -	
60	2008 Tax Allocation Bonds Series A	Bonds Issued On or Before 12/31/10	5/1/2008	5/1/2038	US Bank	To fund Orange Merged & Amended	Orange Merged	0	Y	\$ -						\$ -						\$ -	
61	2008 Tax Allocation Bonds Series B	Bonds Issued On or Before 12/31/10	5/1/2008	5/1/2038	US Bank	To fund Orange Merged & Amended	Orange Merged	4,535,269	N	\$ 658,881				330,081		\$ 330,081				328,800		\$ 328,800	
70	Successor Agency Administrative Costs	Admin Costs	8/16/1983	7/5/2039	various	Costs for maintaining Successor Agency operations	Orange Merged	250,000	N	\$ 38,100					19,050	\$ 19,050					19,050	\$ 19,050	
128	2014 Tax Allocation Refunding Bonds Series A	Bonds Issued After 12/31/10	12/4/2014	9/1/2023	US Bank	2014 Bond Refunding of the 1997 Tax Allocation Parity Bonds, Series A and the 2003 Tax Allocation Refunding Bonds, Series A. DOF approved Resolution No. OB-0055 that authorized the bond refunding	Orange Merged	11,821,750	N	\$ 2,018,625				2,018,625		\$ 2,018,625				0		\$ -	
130	2018 Tax Allocation Refunding Bonds Series A	Bonds Issued After 12/31/10	7/12/2018	9/1/2036	US Bank	2018 Bond Refunding of the 2008 Tax Allocation Bonds, Series A. DOF approved Resolution No. OB-0078 that authorized the bond refunding and issuance	Orange Merged	30,025,250	N	\$ 1,285,000				455,000		\$ 455,000				830,000		\$ 830,000	
131	2008B, 2014A, & 2018A Bonds	Fees	6/1/1997	9/1/2036	US Bank	Fiscal agent fees	Orange Merged	80,400	N	\$ 8,300					4,150	\$ 4,150					4,150	\$ 4,150	
132	2008B, 2014A, & 2018A Bonds	Fees	6/1/1997	9/1/2036	Willdan	Bonds disclosure/arbitrage fees	Orange Merged	71,400	N	\$ 10,100					5,050	\$ 5,050					5,050	\$ 5,050	

**Orange City Recognized Obligation Payment Schedule (ROPS 23-24) - Report of Cash Balances**

**July 1, 2020 through June 30, 2021**

**(Report Amounts in Whole Dollars)**

Pursuant to Health and Safety Code section 34177 (I), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. For tips on how to complete the Report of Cash Balances Form, see [Cash Balance Tips Sheet](#).

A	B	C	D	E	F	G	H
		<b>Fund Sources</b>					
		<b>Bond Proceeds</b>		<b>Reserve Balance</b>	<b>Other Funds</b>	<b>RPTTF</b>	
		Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, Grants, Interest, etc.	Non-Admin and Admin	
	<b>ROPS 20-21 Cash Balances (07/01/20 - 06/30/21)</b>						<b>Comments</b>
<b>1</b>	<b>Beginning Available Cash Balance (Actual 07/01/20)</b> RPTTF amount should exclude "A" period distribution amount	2,517	129	811,986	11,363	0	E1:PPA 17-18 \$180,566 PPA 18-19 \$495,888 PPA 19-20 \$135,532
<b>2</b>	<b>Revenue/Income (Actual 06/30/21)</b> RPTTF amount should tie to the ROPS 17-18 total distribution from the County Auditor-Controller	5	30	0	98,892	5,451,423	G2: ROPS 20-21B RPTTF \$2,820,728 + ROPS 20-21A RPTTF \$2,630,695 (#920.10100 beg bal)= \$5,451,423
<b>3</b>	<b>Expenditures for ROPS 20-21 Enforceable Obligations (Actual 06/30/21)</b>	28	155	180,566	114,234	5,352,719	E3+G3+ G4 [ 50% of 2008B & 2014A \$12,500 +85,000 ] = \$5,630,785 = PPA Actual Exp
<b>4</b>	<b>Retention of Available Cash Balance (Actual 06/30/21)</b> RPTTF amount retained should only include the amounts distributed as reserve for future period(s)	0	0	631,420	1,204	97,500	G4: 50% 2008B <b>\$12,500</b> (435,000 20-21B - 410,000 20-21A) / 2 50% 2014A <b>\$85,000</b> (3,480,000 20-210B - 3,310,000 20-21A) / 2 = <b>\$85,000</b>
<b>5</b>	<b>ROPS 20-21 RPTTF Prior Period Adjustment</b> RPTTF amount should tie to the Agency's ROPS 20-21 PPA form submitted to the CAC	No entry required				1,204	ROPS 20-21 PPA
<b>6</b>	<b>Ending Actual Available Cash Balance (06/30/21)</b> <b>C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)</b>	\$ 2,494	\$ 4	\$ 0	\$ (5,183)	\$ 0	



# Agenda Item

## City Council

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**Item #:** 5.1.

12/13/2022

**File #:** 22-0715

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**TO:** Honorable Mayor and Members of the City Council

**FROM:** Councilmember Kathy Tavoularis

### 1. SUBJECT

Resolution supporting the Iranian-American community. (Tavoularis)

### 2. SUMMARY

Resolution declaring support of the Iranian-American community and condemning the violence perpetrated by the government of Iran against its people.

### 3. RECOMMENDED ACTION

Consider adoption of Resolution No. 11429. A Resolution of the City Council of the City of Orange declaring support of the Iranian-American community and condemning the violence perpetrated by the government of Iran against its people.

### 4. ATTACHMENT

- Resolution No. 11429



# Agenda Item

## City Council

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**Item #:** 5.1.

12/13/2022

**File #:** 22-0715

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**TO:** Honorable Mayor and Members of the City Council

**FROM:** Councilmember Kathy Tavoularis

### 1. SUBJECT

Resolution supporting the Iranian-American community. (Tavoularis)

### 2. SUMMARY

Resolution declaring support of the Iranian-American community and condemning the violence perpetrated by the government of Iran against its people.

### 3. RECOMMENDED ACTION

Consider adoption of Resolution No. 11429. A Resolution of the City Council of the City of Orange declaring support of the Iranian-American community and condemning the violence perpetrated by the government of Iran against its people.

### 4. ATTACHMENT

- Resolution No. 11429

## **RESOLUTION NO. 11429**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE DECLARING SUPPORT OF THE IRANIAN-AMERICAN COMMUNITY AND CONDEMNING THE VIOLENCE PERPETRATED BY THE GOVERNMENT OF IRAN AGAINST ITS PEOPLE**

**WHEREAS**, the rights of life, liberty, and the pursuit of happiness are endowed to all men and women by their Creator; and

**WHEREAS**, the circumstances surrounding the September 16th death of Mahsa Zhina Amini are inexcusable, as she was arrested and taken into custody by Iran's Guidance Patrol, i.e., morality police, for allegedly not properly wearing her state-mandated hijab; and

**WHEREAS**, the tragic death of Mahsa Zhina Amini has inspired numerous and ongoing protests throughout Iran, resulting in thousands of arrests to extinguish the voices of journalists, media figures, and members of the public who seek to amplify Iranians' desire for personal freedoms, which the government of Iran has now blamed on the United States; and

**WHEREAS**, over the last 43 years, the government of Iran has committed numerous acts of violence and human rights violations against its own people, particularly against women and students; and

**WHEREAS**, just since Mahsa Zhina Amini's death, the government of Iran has been responsible for: the killing of more than 200 civilians; the gassing of those protesting for women, life, and freedom; the brutal crackdown of university students' protests including at Sharif University of Technology; the threatening of sexual violence as a means of silencing opposition; and the burning of Evin Prison that holds political prisoners, intellectuals, reporters, and journalists; and

**WHEREAS**, the government of Iran has restricted the people's access to internet, phone, and other forms of communication.

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

#### **SECTION 1.** The City Council hereby finds and declares:

- A. That the City of Orange stands with its Iranian-American community members, particularly Iranian-American women, as their relatives and associates are suffering through the current injustices in Iran.
- B. That the City of Orange condemns the violent acts that are being perpetrated against the Iranian people.

- C. That the City of Orange calls upon the government of Iran to end its systemic human rights violations.
- D. That the City of Orange calls upon other governments to join in the support of Iranians, in Iran and abroad, and the condemnation of the government of Iran's violent acts against its own people.

**ADOPTED** this 13th day of December 2022.

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Mark A. Murphy, Mayor, City of Orange

**ATTEST:**

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Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     ) ss.  
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 13th day of December 2022, by the following vote:

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

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Pamela Coleman, City Clerk, City of Orange