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AGENDA ITEM
October 11, 2016

TO: Honorable Mayor and Members of the City Council

FROM: Rick Otto
City Manager

1. SUBJECT

Pre-Development Agreement between the City of Orange ("City") and Milan REI X relating to a 109-acre site known as the Trails at Santiago Creek.

2. SUMMARY

Milan REI X intends to submit a land use entitlement application for the 109-acre site known as the Trails at Santiago Creek. The primary purposes of the Pre-Development Agreement are twofold: (1) to establish a framework of guidelines and procedures for the processing of requested land use entitlements for the proposed Project; and (2) to identify a range of potential Project Alternatives to be considered. In consideration for this Pre-Development Agreement, the Developer has agreed to provide certain Public Benefits. The agreement does not limit the City Council’s discretion to either approve or deny future requested approvals for the proposed development.

3. RECOMMENDED ACTION

Authorize the Mayor and City Clerk to execute the Pre-Development Agreement between the City of Orange and Milan REI X.

4. FISCAL IMPACT

There will be no fiscal impact to the City.

5. STRATEGIC PLAN GOAL(S)

3. Enhance and promote quality of life in the community:
   c. Support and enhance attractive, diverse living environments.
   e. Develop and strengthen collaborative partnerships to enhance and promote quality of life programs, projects, and services.

ITEM # 7.2  10/11/16
6. DISCUSSION and BACKGROUND

BACKGROUND
Over the past two decades, there have been various attempts to process land use entitlement applications for the 109-acre site located north of Santiago Canyon Road, south of Mabury Ranch, east of Cannon Street and west of The Reserve. A portion of the site includes Santiago Creek. The site, previously referred as “Sully Miller” or “Rio Santiago”, has been utilized for a sand and gravel operation for many years. The current property owner, Milan REI X (“Developer”) intends to submit a new land use entitlement application for the site for a project to be known as the Trails at Santiago Creek (“Project”).

DISCUSSION
For the past 16 months, the Developer has conducted extensive outreach with representatives of many of the adjacent neighborhoods in an attempt to determine community priorities for the future of the site, including Orange Park Association, Mabury Ranch Homeowners Association, and The Reserve Homeowners Association. In addition, a City Council Ad Hoc Committee comprised of Mayor Pro Tem Murphy and Council Member Nichols has met with community members to facilitate discussions related to the future of the site.

As a result of the community input, the Developer has identified a range of alternatives for the 109-acre site that could include residential development on 25 to 50 acres of the Project. The remainder of the site could include alternatives for open space, trails, and equestrian, community and recreation uses. The Project, including the proposed number of residential units, lot sizes, amount of open space and project amenities will be further defined through the environmental review and entitlement process.

As part of this pre-planning effort, City staff and the Developer’s representatives have worked together to establish a framework for an appropriate land use entitlement process for the Project. To formalize and ensure transparency for the entitlement process, the City and the Developer are interested in entering into the attached Pre-Development Agreement which sets out some general parameters and alternatives to guide the processing of various requested land use approvals required for the Project. The relative merits of the Project will be fully addressed and judged by staff, the public, the Planning Commission and the City Council during and upon completion of the CEQA process.

A typical development agreement contains conditions associated with the discretionary entitlements for a developer to build a project. Development agreements generally provide for a wide range of public benefits than those that might otherwise be obtained. However, this agreement does not rise to the level of a development agreement, but is designed to accomplish some development agreement goals, i.e., establishing parameters for future processing, efficiency and public benefits beyond which might otherwise be obtainable, while not providing the developer with any entitlements or vesting rights. The agreement does not bind the City Council to any particular course of action and the City Council retains its full and complete discretion to approve, deny or request modifications when the Project is considered for a final decision.
The major provisions of the Pre-development Agreement are as follows:

- Proposed alternatives for the Project on approximately 109 acres with a range of 25 to 50 acres available for residential units, and includes alternatives which takes into consideration open space, trails, equestrian, community and recreational uses.
- An obligation of the Developer to submit for land use entitlement approvals that include a Development Plan, CEQA compliance, Zoning/General Plan Amendment, Vesting Tentative Map and a Development Agreement.
- Continue with the cessation of the operation of the sand and gravel operation during the processing of the Project consistent with the June 12, 2015 memorandum submitted by the Developer (attached within the Pre-development Agreement) and the interim remediation of the property which will result in the lowering of the existing sand and gravel material stockpiles on the Project site.
- Cooperation between Developer and City for the evaluation of easements and the possible extension of the Santiago Creek Trail to the north side of the Project site.
- A maximum term of five years.

Based on community input, in September 2015 the Developer temporarily ceased the sand and gravel operations as well as improved the aesthetics of the perimeter of the site. This good faith effort has led to positive community feedback and has helped with the Developer’s outreach efforts. To further with their good faith effort, as a component of this Pre-development Agreement the Developer is committing to lower the material stockpiles on the site. This significant Public Benefit is being provided by the Developer in advance of obtaining any land use approvals. Per the agreement, the Developer will have 90 days to prepare and submit to the City a stockpile reduction plan (“Interim Remediation Plan”). The agreement allows the Developer to discontinue the Interim Remediation Plan should they withdraw their land use entitlement application.

CONCLUSION

The proposed Pre-development Agreement will provide the Developer with certainty as to the land use entitlement process in exchange for certain Public Benefits that have been agreed to in response to community input. The Pre-development Agreement also provides for a high level of transparency to the community related to the consideration of Project Alternatives. The agreement does not limit the City Council’s discretion to either approve or deny future requested approvals for the proposed development and subject to full compliance with CEQA.

7. ATTACHMENTS

- Pre-Development Agreement
PRE-DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF ORANGE AND
MILAN REI X
RELATING TO 109 ACRES KNOWN AS THE TRAILS AT SANTIAGO CREEK

THIS AGREEMENT ("Agreement") is entered into this _day of October, 2016, by and between the CITY OF ORANGE, a municipal corporation of the State of California ("City") and MILAN REI X, a California Limited Liability Company herein referred to as ("Developer"). Developer and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties". This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties.

RECITALS

A. The subject of this Agreement is those certain parcels of land, consisting of approximately one hundred and nine (109) acres located in the City of Orange, diagrammed and more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference ("Property") The Property is commonly known as the Rio Santiago Project and referred to herein as the "Project Site". Developer represents that it has an equitable or a legal interest in the Project Site.

B. As further described in Recital C below, Developer and City ultimately seek to secure through i) a development plan or specific plan as defined and adopted pursuant to the City of Orange Municipal Code ("Development Plan"); and ii) a development agreement mutually negotiated by the parties pursuant to City and state law ("Development Agreement"), representing an enforceable arrangement by which Developer shall be allowed to develop residential units within a range of approximately 25 to 50 acres of the Project Site. The parties agree to evaluate and process a Development Plan and Development Agreement for the Project Site to include the development of residential housing to be considered and evaluated by the parties in accordance with the range of plan alternatives described in Exhibit "B" ("Plan Alternatives").

C. The parties agree to exert their respective best efforts to expeditiously process and agree upon a Development Plan and Development Agreement which will result in Developer benefits and burdens as generally described in the framework of Plan Alternatives. Such finally
approved Development Plan is referred to in this Agreement as the “Project”. Hereinafter any reference in this Agreement to the Project shall also mean and include the Property.

D. Developer and City understand that the benefits and burdens of the Project described in this Agreement shall only become enforceable through the Development Plan and Development Agreement and related Project land use approvals. The parties will exert their respective best good faith efforts to negotiate the terms of the Development Agreement simultaneously with the City’s review of Developer’s Development Plan application so that it may be entered into and executed by the parties at such time as a final EIR is certified and the Development Plan application is acted upon by the City. Therefore, neither City nor Developer obligates itself to benefit or burden the Project Site with the above-described Project until such time as a final EIR is certified, the Development Plan application is favorably acted upon by the City, the Development Agreement is successfully negotiated, approved and becomes binding upon the parties and all Project Approvals have not been challenged or set aside within the applicable statutes of limitation. However, if Developer so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Development Agreement if such benefits and burdens have been adopted by the City in the Development Plan. Consistent with the above, nothing contained in this Agreement is intended to be interpreted as imposing an obligation upon i) the City to approve a Development Plan or to certify an EIR different than that obligation (if any) that would otherwise apply in the absence of this Agreement under the City’s general plan in place on the day this Agreement is executed; and ii) the parties to enter into a Development Agreement.

E. Developer will apply to the City for certain environmental certifications and land use approvals, permits and other entitlements relating to the development of the Project. These actions are collectively referred to in this Agreement as the “Project Approvals,” and include the following:

1. CEQA Compliance. Pursuant to the California Environmental Quality Act, the State CEQA Guidelines, and the City’s local CEQA implementing guidelines and procedures (collectively, “CEQA”), the Project and the Project Approvals will be the subject of an Environmental Impact Report (“EIR”) and any other environmental review required for CEQA compliance. The information in the EIR will be considered by the Planning Commission and the City Council as part of its consideration of the Development Plan, Development Agreement and related Project Approvals.

2. Development Plan. As described in Section 2.03 (g) of this Agreement, if a Development Plan application is submitted to the City hereunder, Developer shall prepare and submit the Development Plan, pursuant to Orange Municipal Code (“OMC”) chapter 17.26, as a single application which Plan/application shall be consistent with the provisions of this Agreement and the Plan Alternatives. If submitted, said Development Plan application shall conform to the parties’ purpose and intent as set forth in this Agreement. The parties recognize that changes to the land use plan may be reflected in the Development Plan to mitigate environmental impact which may be reflected in the EIR.
3. **Zoning/General Plan Amendment** Land use designations consistent with the Development Plan and a related General Plan amendment bringing those land use designations into conformance with the City’s General Plan shall be adopted concurrently with the Development Plan if a Development Plan is approved by the City. Such Zoning and its related General Plan amendment is collectively referred to as “Zoning” in this Agreement.

4. **Vesting Tentative Map.** The Project Approvals may include an application for a parcel map(s) or vesting tentative map(s) for the Project Site, which maps, if approved, will allow for the filing of multiple parcel or final vesting tentative maps pursuant to the provisions of the California Subdivision Map Act.

5. **Development Agreement.** As stated, it is the parties’ intent to negotiate in good faith the Development Agreement simultaneous with the City’s review of the Development Plan application (and any necessary Zoning/General Plan Amendment application) with the intent that the Development Agreement may be approved, pursuant to OMC chapter 17.44, and executed at the same time the Development Plan application is acted upon.

6. **Community Facilities District.** City and Developer will evaluate and consider the formation of a community facilities district or other financing district for future improvements and related infrastructure supporting the project upon such terms as the parties shall mutually agree.

F. In addition to the Project Approvals Developer later may make application for other land use approvals, actions, agreements, financing districts, permits or other entitlement necessary or desirable to the development of the Project (“Subsequent Approvals”), including without limitation subsequent subdivision maps, site plan approvals, Development Plan approvals, use and grading permits, lot line adjustments, sewer and water connections, design review, building permits, certificates of occupancy and the formation of financing districts. Conditions of approval to such Subsequent Approvals, if applicable, shall also be considered included in any reference to the Subsequent Approvals.

G. As used in this Agreement, the phrase “Rights and Obligations” means the entirety of the provisions of this Agreement (all the benefits, burdens and other provisions). Further, the phrase “Rights and Obligations” is comprised of term “Rights” – which is used in this Agreement to mean all of the rights and other benefits of the Agreement, and the term “Obligations” – which is used in Agreement to mean all of the duties, obligations responsibilities and other burdens of this Agreement.

H. The parties believe that, although currently designated as Resource Area under the City’s General Plan and Sand and Gravel Extraction District under the City’s zoning code, development of the Project in accordance with the Plan Alternatives will provide for orderly growth consistent with the goals, policies, and other provisions of the City’s General Plan. The parties understand that until the impacts of the Project have undergone a full and public environmental analysis, a final determination on the Project cannot be made and the City does not commit or bind itself, in any way, to approving any aspect of the Project by entering into this Agreement.
NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS

Section 1.01 Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

Section 1.02 Effective Date. This Agreement shall become effective upon the date upon which this Agreement is executed by Developer and by the City ("Effective Date").

Section 1.03 Term.

(a) The "Term" of this Agreement shall be determined pursuant to this Section 1.03. The Term shall commence upon the Effective Date and shall continue until the first to occur of the following:

(1) The "fifth (5th) anniversary of the Effective Date;

(2) That date that a Development Plan and/or the Development Agreement are approved, become effective (through the resolution or ordinance adopting it taking legal effect), is binding on the parties, and is not invalidated by litigation or a referendum within the applicable statute of limitations or,

(3) Immediately upon Developer’s delivery to City of written notice to terminate this Agreement.

(b) Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

ARTICLE 2. APPLICABLE LAW AND PROCESSING.

Section 2.01 Right to Applicable Law. During the Term of this Agreement any and all Project Approvals (e.g. General Plan amendment(s), Development Plan, Zoning, Development Agreement) shall be processed, considered, reviewed, acted upon (i.e., approved, conditionally approved or denied) by City pursuant only to this Agreement and the "Applicable Law" it describes.

Section 2.02 Applicable Law. The "Applicable Law" shall mean all of the following:
(a) **Laws Currently in Effect.** Those “City Laws” in force, effect and operation on the Effective Date. As used in the preceding sentence, “City Laws” shall mean and include all City laws, ordinances, resolutions, rules, regulations, policies, guidelines or any other action, whether enacted or adopted by the City, or its electorate through the initiative or referendum process related to permitted uses, density, design, improvement, construction standards, or other rules, regulations or specifications for land development.

(b) **Changes in State and Federal Law.** Those changes in City Law expressly required by state or federal laws or regulations. If the application of such changes prevents or precludes performance of one or more provisions of this Agreement, City and Developer shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

(c) **Processing Fees.** Those processing fees (“Processing Fees”) charged by the City for the City’s administrative time and related costs incurred relating to the preparation and/or consideration of any application for Project Approvals requested by Developer which Processing Fees are adopted and in effect citywide at such time(s) said applications are submitted to the City.

(d) **Development Impact Fees.** Those development impact fees (“Development Fees”) imposed, charged and collected by the City which are set forth in Exhibit “C” attached hereto and made a part hereof The Development Fees shall be adjusted annually to reflect the percentage of construction cost increase or decrease, if any, as published by the Engineering News Record Construction Cost Index published on or about the first day of June of each year. This section does not apply to any City development impact fees, capital improvement fees or other future development fees duly adopted by the City in accordance with state law and City ordinances.

Section 2.03 City Processing of Approvals.

(a) Upon receipt of an application accepted as complete by the City and upon payment of Processing Fees for any Project Approval meeting the requirements of Applicable Law (such applications and Processing Fees collectively referred to herein as the (“Application”), City shall commence and complete all steps necessary to act upon (approve, conditionally approve or deny) the Application including, without limitation:

1. The notice and holding of all required public hearings; and
2. Taking final action on the Application (approve, conditionally approve or deny) in compliance with this Agreement and the Applicable Law.

(b) City may impose conditions of approval on the Application to the extent that such conditions of approval are consistent with the law, the Applicable Law, or are necessary to make the Application consistent with or bring the Application into compliance with the Applicable Law. If City denies any such Application for a Project Approval, City must specify in writing the basis for the making such denial in order to assist the Developer in
resubmitting and ultimately securing City approval of the requested Project Approval. Any such
denial or specified modifications shall be consistent with this Agreement and the Applicable
Law. City and Developer shall, with due diligence and in good faith, cooperate to process the
Application and City agrees to and either approve, conditionally approve or deny any
applications for Project Approvals.

(c) Developer shall provide City, in a timely manner, all documents, applications, plans, and other information necessary for the City to carry out obligations hereunder and shall cause Developer’s planners, engineers, and other consultants to submit to City, in a timely manner, all required materials and documents. It is the express intent of Developer and City to cooperate and diligently work to process and either approve, conditionally approve or deny all Applications for Project Approvals.

(d) Processing Timelines. After application is deemed complete, City shall review materials submitted for processing, considering and acting upon (approving or denying) the EIR, Development Plan, Zoning and Development Agreement in a timely and expeditious manner. City staff shall review and comment upon any applications for Project Approvals within 30 days of submittal by Developer, provided however, nothing contained herein shall be construed as requiring City staff to review and comment on such applications in a period of time less than otherwise provided under state law or city ordinances.

(e) Other Governmental Permits. Developer shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements as may be required by other agencies having jurisdiction over, or in connection with the development of or provisions of services to, the Project. City shall cooperate with Developer relative to such entitlements.

(f) Environmental Mitigation. In connection with City’s review of the Project Approvals, Subsequent Approvals or issuance of any other permit, approval or other entitlement that is subject to CEQA, City shall promptly commence and diligently process any and all preliminary reviews, initial studies and other assessments required by CEQA and to the extent permitted or required by CEQA, City shall use and adopt any environmental impact report(s) certified for the Project, addenda thereto and other existing environmental impacts of such matter or matters without requiring new or supplemental environmental documentation unless otherwise required by CEQA.

(g) Development Plan Application. Developer shall make application to the City for a Development Plan subject to this Agreement. In order to allow for proper environmental review and land planning, the Application submitted by Developer shall describe the Project consistent with the options set forth in the Plan Alternatives. The Development Plan shall indicate all necessary information regarding the location, scope and detail of the proposed benefit and/or burden of the Project, but shall recognize and indicate that its implementation may be accomplished through the Development Agreement. However, notwithstanding the foregoing or any provisions in this Agreement to the contrary, if Developer so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Development Agreement, if such benefits and burdens have been adopted by the City in the Development Plan.
If a Development Plan application for the Project and/or Project Site is submitted to City during the Term of this Agreement, Developer shall prepare and submit the Development Plan as a single Application, which Development Plan Application shall encompass all or a portion of the Property, and which Plan/Application shall be consistent with the Applicable Law and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Development Plan application by Developer if it seeks to use any portion of the Project Site for uses other than those uses as set forth in The Plan Alternatives or otherwise allowed under current city law during the Term of this Agreement. Consistent with the foregoing, should Developer make application for such Development Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion of the Project Site which is designated to be used only for uses currently allowed on the Project Site under City law. Subject to this Agreement, if submitted, said Development Plan application shall conform to the parties’ purpose and intent evidenced this Agreement.

(h) Development Agreement. Simultaneous with City’s review of the Development Plan, City and Developer will make a good faith effort to negotiate a Development Agreement that shall, if agreed upon, provide Developer with a vested right to the benefits and burdens of the Project. However, if Developer so chooses, it may subject itself to the benefits and burdens of the Project, without the execution and approval by the City of a Development Agreement. In processing and seeking approval of the Development Agreement, Developer shall comply with all of the City’s requirements as set forth in Chapter 17.44 including, without limitation, the submission to the City of a fiscal impact statement and conceptual site plans for the Project.

Section 2.04 Public Benefits

(a) Cessation of Operations and Interim Remediation of the Property. Developer has voluntarily and temporarily suspended its sand and gravel operations on the Property as of September 7, 2015 in accordance with that certain memorandum submitted to the City dated June 12, 2015 attached hereto as Exhibit “D”. Within ninety (90) days of the Effective Date, Developer will prepare and submit to the City a comprehensive stockpile reduction sequence plan (“Sequence Plan”) which may include interim grading and soil remediation which will result in a lowering of the existing sand and gravel material stockpiles on the Project Site generally in accordance with the grading of those areas of the Project Site depicted on Exhibit “E” (Interim Remediation Plan”). Developer will implement the Interim Remediation Plan in accordance with the schedule and conditions set forth in the Sequence Plan therein and Developer may, in Developer’s sole unreviewable discretion, cease implementation of the Interim Remediation Plan and recommence its sand and gravel operations at any time Developer formally withdraws its Development Plan Application in writing. Nothing contained in this Agreement shall be interpreted as a waiver, nullification or voiding of Developer’s right to conduct sand and gravel operations on the Property.

(b) Developer will cooperate with the City to evaluate the connection/extension of the Santiago Creek Trail on the north side of the Project Site, including the identification of possible easements on the north side of Santiago Creek that may be used for a trail connection/extension.
ARTICLE 3. DEFAULT: ANNUAL REVIEW; TRANSFER NOTICE.

Section 3.01 Default

(a) Failure or unreasonable delay by either party to perform any term, provision, or condition of this Agreement for a period of thirty (30) days after receipt of a written “Notice of Default” from the other party shall constitute a default under this Agreement, subject to extensions of time shall be given pursuant to Section 4.01 of this Agreement. Said Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, neither party shall be considered in default for the purposes of termination or institution of a legal action. If the alleged default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after Notice of Default and expiration of the 30-day period without cure, either party, at its option, may institute a legal action.

(d) Evidence of a party’s default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 3.02 of this Agreement.

(e) Failure or delay by either party in giving Notice of Default pursuant to this Section shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the party of its legal rights or right to bring a legal action which the party may deem necessary to protect, assert, or enforce any such legal rights.

(f) Notwithstanding anything to the contrary in this Agreement, the Parties agree that the sole remedy for an alleged default or breach by either party under this Agreement shall be the remedy of specific performance and that monetary damages shall be limited to the recovery of attorney’s fees, court costs and expenses of litigation for the prevailing party.

Section 3.02 Annual Review. The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every 12 months from the Effective Date the (“Annual Review”). The City Planning Director may, in his or her sole discretion, review such good faith compliance more often than once every 12 months. At the time of such Annual Review (whether every 12 months or sooner) the Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. City failure to hold such an Annual Review shall not constitute a default under this Agreement.

Section 3.03 Enforced Delay; Extension of Time Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be
in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state of federal laws or regulations, new or performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinances, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 3.04 Notice of Transfer. City shall have no approval power over any transfer of all or any portion of the Property. In any such transfer, Developer shall not sever any Rights from any Obligations under this Agreement; instead, the transferee (successor interest) shall take all Rights with all the Obligations under this Agreement. Developer shall provide written notice to City (such notice given pursuant to § 4.01 of this Agreement) of its sale of all or any portion of the Property to a third party within thirty (30) days of such sale. The “sale” for the purposes of Developer providing City with such notice shall mean the recordation of a grant deed(s) relating to that sale. Failure of Developer to provide such notice shall be subject to Section 3.01 of this Agreement.

ARTICLE 4. MISCELLANEOUS.

Section 4.01 Notices

(a) Any notice or communication required hereunder between City or Developer shall be in writing and may be given either personally, by registered or certified mail, return receipt requested. If given by such registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated below as the party to whom notice are to be sent, or (ii) five (5) days after such a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If sent by facsimile transmission, a notice shall be deemed to have been given when received by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

City of Orange, City Manager
300 East Chapman Avenue
Orange, CA 92866
With a copy to:

City of Orange, City Attorney
300 East Chapman Avenue
Orange, CA 92866

If to Developer, to:

Milan REI X
c/o Tivoli Capital, Inc.
888 S. Disneyland Drive, Suite 103
Anaheim, CA 92802

With a copy to:

Carmen A. Morinello, Esq.
18101 Von Karman, Suite 1260
Irvine, CA 92612

(c) A party may change its notice information by giving notice (in the form and manner required by this Section 4.01) to the other party. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted consistent with such new information.

Section 4.02 Venue. This Agreement has been executed and delivered in, and shall be interpreted, construed, enforced pursuant to and in accordance with the laws of the State of California. All rights and obligations of the parties created thereunder are performable in the City of Orange, and such City shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Section 4.03 Good Faith/Reasonable Action. Each party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other party through this Agreement can be enjoyed, neither party shall take any action that will deprive the other party of the enjoyment of the rights secured through this Agreement, and each party shall act without delay on the matters which are the topic of this Agreement.

Section 4.04 Agreement Status. The Parties understand and do not intend for this Agreement to be a statutory development agreement pursuant to California Government Code § 65864, et seq. and Orange Municipal Code § 17.44 et seq. and that the purpose and scope of this Agreement is to establish a framework of guidelines, procedures and understandings for processing the land use entitlements for the Project.

Section 4.05 Statute of Limitations. No action or proceeding ("Action") by a person, public agency, or public or private corporation, partnership, association, organization nor other business or non-business entity other than the parties to the Agreement (or their successors) to
attack, review, interpret, set aside, void, or annul all or any portion of this Agreement or the
decision of the City to approve and execute it shall be maintained or allowed unless the Action
is commenced and service is made on the City in accordance with the time required under
applicable State law.

Section 4.06 No Third Party Rights Created. Nothing in this Agreement, whether
expresses or implied, is intended to confer any rights or remedies under or by reason of this
Agreement or any persons other than the parties to it and their respective permitted successors
and assigns, nor if anything in this Agreement intended to relieve or discharge the obligations or
liabilities of any third persons or any right of action against any party to this Agreement.

Section 4.07 Construction. This Agreement has been reviewed and revised by legal
counsel for both City and Developer, and no presumption or rule that ambiguities shall be
construed against the drafting party shall apply to the interpretation or enforcement of this
Agreement.

Section 4.08 Other Miscellaneous Terms. The singular includes the plural; the
masculine gender includes the feminine; “shall” is mandatory; “may” is permissive. If there is
more than one signer of this Agreement, the signer obligations are joint and several.

Section 4.09 Exhibits. This Agreement consists of _____ (__) pages (excluding title
page, table of contents and notarial acknowledgment pages), and ____ (__) Exhibits which
constitute in full, the final and exclusive understanding and agreement of the parties and
supersedes all negotiations or previous Agreements between the parties with respect to all or any
part of the subject matter hereof. The following exhibits are attached to this Agreement and
incorporated herein by this reference for all purposes:

Exhibit “A”: Project Site Map and its Legal Description
Exhibit “B”: Plan Alternatives (includes Alternatives A through G)
Exhibit “C”: Development Fees
Exhibit “D”: Memorandum Dated June 12, 2015
Exhibit “E”: Interim Remediation Plan

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of
the day and year first above written.

“Developer”
MILAN REI X
A Limited Liability Company

Dated: _____________________, 2016 By: ______________________________

Its ______________________________
CITY OF ORANGE

By: ______________________
   Teresa E. Smith, Mayor

Dated: ______________________

Approved as to Form:

__________________________
Wayne W. Winthers, City Attorney

Attest:

By ______________________
   Mary E. Murphy, City Clerk
Exhibit “A”: Project Site Map and its Legal Description
[Beneath this page]
Exhibit A

All That certain property situated in County of Orange, State of California, described as follows:

Parcel 2: Assessor's Parcel No.: 093-280-27

That Portion of Lot 2 in Block "A" of the Land of Oge and Bond, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Pages 430 and 431 of Miscellaneous Records of Los Angeles County, California, described as follows:

Beginning at a point North 4°57'00" West, 405.62 feet (Record North 7°07' West) from a point in the South line of said Lot 2, North 73°11'20" East, 450.58 feet (Record North 71° East, 450.582 feet) from the Southwest corner of said Lot 2; Thence North 4°57'00" West, 507.61 feet (Record North 7°07' West, 507.424 feet) to a point in the centerline of the County Road, which is distant North 84°23'30" East, 642.88 feet (Record North 82°13' East, 642.774 feet) from the West line of said Lot 2;

Thence North 84°23'30" East, along the centerline of said County Road as the same existed prior to 1927, 969.25 feet (Record North 82°13' East, 969.606 feet) to an angle point in said centerline;

Thence North 84°23'30" East, along the centerline of said County Road as the same existed prior to 1927, 969.25 feet (Record North 82°13' East, 969.606 feet) to an angle point in said centerline;

Also except therefrom that Portion of said Land lying Southerly and Southwesterly of the Northerly line of the Land described in the Deed to the City of Orange, a Municipal Corporation, recorded August 22, 1991 as Instrument No. 91-453101 of Official Records.


Parcel 3: 370-041-12

That Portion of Lot 3 in Block "A" of the Land of Oge and Bond, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Pages 430 and 431, Miscellaneous Records of Los Angeles County, California, described as follows:

Beginning at the Northwest corner of said Lot 3 and

Thence from said Point of Beginning South 17°38'30" East, along the Westerly line of said Lot 3, 281.68 feet to a point;

Thence South 85°07' East, 157.75 feet to a point;

Thence North 73°53' East, 146.71 feet to a point;

Thence North 67°16' East, 206.30 feet to a point in the Easterly line of Land conveyed to Roy B. Willis, by Deed recorded February 4, 1921 in Book 382, Page 249, Deeds, Records of said Orange County;

Thence North 1°14' West, along said Easterly line 215.70 feet to a point in the Northerly line of said Lot 3;

Thence South 85°00' West, along said Northerly line, 511.81 feet to the Point of Beginning.
Parcel 4: 370-041-25

That Portion of Lot 3 in Block "A" of the Land of Oge and Bond, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Pages 430 and 431, Miscellaneous Records of Los Angeles County, California, described as follows:

Beginning at the point of intersection of the East line of said Lot 3 with the centerline of the County Road, as conveyed to the County of Orange by Deed recorded January 21, 1914 in Book 244, Page 258 of Deeds, Records of said Orange County; Thence Southwesterly along the centerline of said Road, 517.25 feet; Thence Northwesterly (North 17°54' West) 591.4 feet; Thence in an Easterly direction to a point on the East line of said Lot 3, said point being South 17°30' East, 236.15 feet from the Northeast corner of said Lot 3, Thence South 17°30' East, 376 feet to the Point of Beginning.

Except therefrom that Portion of said Land lying within the Land described in the Deed to the City of Orange, a Municipal Corporation, recorded August 21, 1991 as Instrument No. 91-451619 of Official Records.

Parcel 5: Assessor's Parcel No. 093-280-29 (Portion)

That Portion of Lot 2 in Block "A" of the Land of Oge and Bond, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page 430 of Miscellaneous Records of Los Angeles County, California, described as follows:

Beginning at the Northeast corner of said Lot 2; and Thence Southwesterly along the Northwesterly line of the Land conveyed by W. V. Whisler and wife, to Mrs. J. R. Fletcher, by Deed recorded April 13, 1914 in Book 248, Page 55 of Deeds, to a bolt in the center of the County Road at the Southwest corner of said Land conveyed to said Mrs. J. R. Fletcher; Thence running Northwesterly along the center line of said County Road, 284.10 feet, more or less, to an old pipe in the angle point in the center line of said County Road; Thence running South 84° West, along the center line of said County Road, 597.94 feet to the Southeast corner of that Portion of said Lot 2 conveyed by B. D. Parker, a Single Man, to Chris Senti and wife, by Deed recorded November 2, 1923 in Book 495, Page 384 of Deeds; Thence North 39°50'15" East, 815.36 feet, more or less, to a point in the North line of said Lot 2, which point is 266.66 feet South 85° West from the Northeast corner of said Lot 2; Thence North 85° East, 266.66 feet to the Point of Beginning.

Excepting therefrom, that Portion of said Land described as follows:

Beginning at the Northeast corner of said Lot 2; running Thence Southwesterly along the Northwesterly line of the Land conveyed by W. V. Whisler to Mrs. J. R. Fletcher, by Deed recorded April 13, 1914 in Book 248, Page 55 of Deeds, to a bolt in the center of the County Road at the Southwest corner of said Land conveyed to said Mrs. J. R. Fletcher; running Thence Northwesterly along the center line of said County Road 284.10 feet to a point in the centerline of said County Road; running Thence in a Southwesterly direction along the center centerline of said County Road, 59.94 feet to a point; Thence in a Northeasterly direction along a straight line to a point in the Northerly line of said Lot 2, which point is South 85° West, 103.66 feet from the Northeast corner of said Lot 2; Thence North 85° East, along the Northerly line of said Lot 2, 103.66 feet to the Point of Beginning.

Parcel 6: Assessor's Parcel No.: 093-280-29 (Portion)

That Portion of Lot 2 in Block "A" of the Land of Oge and Bond, as shown on a Map recorded in Book 3, Page 430 of Miscellaneous Records of Los Angeles County, California, described as follows:

Beginning at the Northeast corner of said Lot 2; Thence Southwesterly along the Northwesterly line of the Land conveyed by W. V. Whisler et ux to Mrs. J. R. Fletcher, by Deed recorded April 13, 1914 in Book 248, Page 55 of Deeds, to a bolt in the center of the County Road at the Southwest corner of said Land conveyed to said Mrs. J. R. Fletcher;
Thence Northwesterly along the center line of said County Road 284.10 feet to a point in the centerline of said County Road; running
Thence in a Southerly direction along the centerline of said County Road 59.94 feet to a point; Thence in a Northerly direction along a straight line to a point in the Northerly line of said Lot 2, which point is South 85° West, 103.66 feet from the Northeast corner of said Lot 2; Thence North 85° East, along the Northerly line of said Lot 2, 103.66 feet to the Point of Beginning.


Parcel 7: Assessor's Parcel No.: 370-011-18

That Portion of the South half of Section 14, Township 4 South, Range 9 West and the North half of Section 23, Township 4, Range 9 West, of the Land allotted to Paul Peralta De Dominguez in the decree of partition of the Rancho Santiago De Santa Ana, recorded in Book "B" of Judgments of the 17th judicial district of California in the City of Orange, County of Orange, State of California, included within the Land described in the Deed to A. B. Heinsbergen and Nedith C. Heinsbergen recorded April 27, 1935 in Book 748, Page 222 of Official Records of said County, lying Southerly of the following described line:

Beginning at a 1/2 inch iron pipe at Station No. 15 as shown on a Map Filed in Book 3, Page 54 of Record of Surveys in the City of the County recorder of said County;
Thence South 82°50'00" West, 952.71 feet;
Thence South 0°10'00" East, 129.92 feet;
Thence South 86°54'40" West, 165.86 feet;
Thence South 89°48'20" West, 117.49 feet;
Thence North 85°36'20" West, 101.01 feet;
Thence North 83°42'50" West, 174.68 feet;
Thence South 72°11'10" West, 167.87 feet;
Thence South 70°15'19" West, 309.10 feet;
Thence South 55°03'20" West, 388.74 feet to an axle, which bears South 46°11'40" East, 549.09 feet from a 1 inch iron pipe at station 9 of said Record of Survey.

Except that Portion described as follows:

Beginning at the Northeast corner of a Tract of Land conveyed to Henry Snyder by Deed recorded January 6, 1881 in Book 77, Page 22 of Deeds, in the office of the County Recorder of Los Angeles County, California,
Thence South 83° West, 952.71 feet along the North line of said Snyder's Land;
Thence South 1027.99 feet to the Southerly line of the Land conveyed to A. B. Heinsbergen et ux by Deed recorded April 27, 1935 in Book 748, Page 222 of Official Records, in the office of the County recorder of said Orange County;
Thence along said Southerly line North 85° East, 550.00 feet to the Southeast corner of said Heinsbergen Land,
Thence North 19°45' East, 1179.42 feet to the Point of Beginning.

Also excepting and reserving therefrom all oil, gas, asphaltum and tar, in and under said Land, 500 feet below the surface, but without the right to use the surface of said Land in connection with the development thereof, provided, however, the same shall not be construed to prohibit slant drilling operations or such other operations which in no way use or in any way affect the surface rights of said Land and which do not enter said Land at a point less than 500 feet to said surface, as excepted and reserved by Anthony B. Heinsbergen and Nedith C. Heinsbergen, husband and wife, in a Deed recorded November 15, 1972 in Book 10426, Page 541 of Official Records.

Parcel 8: Assessor's Parcel No.: 370-011-21

That Portion of the Land allotted to Paul Peralta De Dominguez, in the City of Orange, County of Orange, State of California, as described in the final order of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B", Page 410 of Judgments of the district court of the 17th judicial district in and for Los Angeles County, California, described as follows:

Beginning at the Northeast corner of the Land conveyed to Henry Snyder by Deed recorded January 6, 1881 in Book 77, Page 22 of Deeds, records of Los Angeles County, California;
Thence South 83°00'00" West, 952.71 feet along the North line of said Snyder's Land;

Exhibit A
3 of 7
Thence South 759.99 feet;
Thence North 83°00'00" East, 665.412 feet to the East line of said Snyder's Land;
Thence North 19°45'00" East, 844.54 feet to the Point of Beginning.

Except that Portion thereof lying Southerly of the following described line:

Beginning at a point on the West line of said Land distant Southerly 509.00 feet from Northwest corner thereof;
Thence North 83°00'00" East, 760.00 feet to the East line of said Land.

Also except therefrom those Portions lying within the Land described as Parcels 1 and 2, in the Deed to Standard Pacific Corporation, recorded March 9, 1981 in Book 12591, Page 984 of Official Records.

Parcel 9: Assessor's Parcel No.: 370-011-22 (Portion)

All that certain Land situated in the Rancho Santiago De Santa Ana, in the City of Orange, County of Orange, State of California, described as follows:

Beginning at the Northwest corner of Lot 2 in Block A of the Land of Oge and Bond, as shown on a Map recorded in Book 3, Page 430 of Miscellaneous Records of Los Angeles County, California;
Thence North 85° East, along the Northerly line of said Lot 1056.03 feet to a stone marked "X";
Thence South 15°59' West, 625.48 feet to a pipe in the centerline of the County Road;
Thence South 83°55' West, along said centerline, 706.14 feet to an iron bar in the West line of said Lot;
Thence North 16°24' West, along said West line 629.14 feet to the Point of Beginning.

Except therefrom that Portion of said Land lying within the Land described in the Deed to the City of Orange, a Municipal Corporation, recorded August 21, 1991 as Instrument No. 91-451618 of Official Records.

Parcel 10: Assessor's Parcel No.: 370-011-22 (Portion)

All that certain Land situated in the Rancho Santiago De Santa Ana, in the City of Orange, County of Orange, State of California, described as follows:

Beginning at the Northeasterly corner of Lot 3 in Block A of the Land of Oge and Bond, as shown on a Map recorded in Book 3, Pages 430 and 431 of Miscellaneous Records of Los Angeles County, California;
Thence Westerly along the Northerly line of said Lot, 526.7 feet to a point;
Thence Southeasterly 218.2 feet to the Northwesterly corner of the Land conveyed to J. A. Burns by Deed recorded June 23, 1923 in Book 476, Page 179 of Deeds;
Thence in an Easterly direction to a point on the East line of said Lot 3, 236.15 feet Southerly from the Northeast corner of said Lot 3;
Thence North 17°30' West, 236.15 feet to the Point of Beginning.

Parcel 11: 370-011-08

That Portion of the Land allotted to Paula Peralta De Dominquez, in the City of Orange, County of Orange, State of California, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B", Page 410 of Judgments of the District Court of the 17th Judicial District in and for Los Angeles County, California, described as follows:

Beginning at a point distant South 924.00 feet and North 84°43' East, 3261.06 feet from the corner common to Section 14, 15, 22 and 23 in said allotment, said point being the Southwest corner of the Land described in the Deed to Henry Snyder, recorded January 6, 1881 in Book 77, Page 22 of Deeds, Records of Los Angeles County, California;
Thence North 36°07' West, 1000.56 feet along the boundary of said Snyder Land to a stake;
Thence South 55°15' West, 381.74 feet to a Rock;
Thence South 7°13' West, 691.22 feet;
Thence North 84°43' East, 995.15 feet to the Point of Beginning.

Exhibit A
4 of 7
Parcel 12: 093-280-30 (Portion)

That Portion of the Land allotted to Paula Peralta De Dominquez, in the City of Orange, County of Orange, State of California, as described in the final order of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District in and for Los Angeles County, California, described as follows:

Beginning at the Southeast corner of the Tract of Land conveyed to A. B. Heinsbergen and wife, by Deed recorded April 27, 1935 in Book 748, Page 222 of Official Records of said County;
Thence North 19°45'00" East, 334.88 feet along the Easterly line of said Land to the Southeast corner of the Land conveyed to Sully Miller Contracting Company, by Deed recorded August 25, 1933 in Book 630, Page 178 of Official Records of said County;
Thence South 83°00'00" West, 665.41 feet to the Southwest corner of said Land conveyed to Sully Miller Contracting Company;
Thence Southerly 268.00 feet, more or less, along the Southerly extension of the Westerly line of said Land to the Southerly line of said Land conveyed to A. B. Heinsbergen and wife;
Thence North 85°00'00" East, 550.00 feet, more or less to the Point of Beginning.

Except therefrom all oil, gas and other hydrocarbon substances, in, under, or that may be produced from a depth below 100 feet, from the surface of said property and any part thereof, as reserved by A. B. Heinsbergen and wife, in the Deed to Earl B. Miller and others, Dated June 9, 1947 and recorded July 29, 1947 in Book 1534, Page 310 of Official Records, in the office of the County recorder of said Orange County.

Parcel 13: 093-280-30 (Portion)

That Portion of the Land allotted to Paula Peralta De Dominquez, in the City of Orange, County of Orange, State of California, as described in the final order of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District in and for Los Angeles County, California, described as follows:

Beginning at the Northeast corner of the Land conveyed to Henry Snyder by Deed recorded January 6, 1881 in Book 77, Page 22 of Deeds, Records of Los Angeles County, California;
Thence South 83°00'00" West, 952.71 feet along the North line of said Snyder's Land;
Thence South 759.99 feet;
Thence North 83°00'00" East, 665.41 feet to the East line of said Snyder's Land;
Thence North 19°45'00" East, 844.54 feet to the Point of Beginning.

Except that Portion thereof lying Northerly of the following described line:

Beginning at a point on the West line of said Land distant Southerly 509.00 feet from the Northwest corner thereof;
Thence North 83°00'00" East, 760.00 feet to the East line of said Land.

Parcel 14: 093-280-30 (Portion) & 093-280-31

That Portion of the Land allotted to Paula Peralta De Dominquez, in the City of Orange, County of Orange, State of California, as described in the final decree of partition of the Rancho Santiago De Santa Ana, which was entered September 12, 1868 in Book "B" Page 410 of Judgments of the District Court of the 17th Judicial District in and for Los Angeles County, California, described as follows:

Beginning at a point on the Northerly line of Block "A" of the "Land of Oge and Bond", as shown on a Map recorded in Book 3, Page 430 and in Book 3, Page 431 both of Miscellaneous Records of Los Angeles County, California, which said Point of Beginning is South 85°29' West, measured along said Northerly line of Block "A", 170.00 feet from the Northeasterly corner of Lot 2 in Block "A" of said Land of Oge and Bond,
Thence from said Point of Beginning North 58°17'10" East, 174.12 feet to an iron pipe marking the Northwesterly corner of Land described in the Deed recorded October 30, 1917 in Book 261, Page 314 of Deeds;
Thence North 75°15' East, 155.00 feet to an iron pipe marking the Northwesterly corner of said Land;
Thence North 87°55'00" East, 114.75 feet;
Thence North 83°43'00" East, 208.64 feet;
Thence North 61°13'00" East, 138.13 feet;

Exhibit A
Thence North 48°35'00" East, 70.01 feet to a point in the Westerly boundary of the Land described in the final order of condemnation recorded in Book 12177, Page 409, Official Records,
Thence along the Westerly boundary thereof North 17°10'18" West, 680.78 feet to a point on that certain course shown as South 85°46' East, 264.10 feet on the Map Filed in Book 3, Page 54 of Record of Surveys said point being North 84°51'58" West, 60.00 feet from "STA 17.A"
Thence North 84°51'58" West, 288.10 feet to station 17
Thence South 88°24' West, 680.18 feet to Station 16,
Thence South 88°24' West, 1030.12 feet to a point on the above mentioned Northerly line of Block "A" of the Land of Oge and Bond, said point being South 85°29' west, 627.42 feet measured along said Northerly line from the Point of Beginning;
Thence North 85°29' East, 360.72 feet along the Northerly line of said Block "A" to the Point of Beginning.

Parcel 15: 093-280-07 (Portion)

That Portion of Lot 2 in Block "A" of the Land of Oge and Bond, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page 430 of Miscellaneous Records of Los Angeles, California, described as follows:

Beginning at a point in the North line of said Lot, 266.66 feet South 85° West, from the Northeast corner of said Lot;
Thence South 39°50'15" West, 815.36 feet to a point in the center of the County Road;
Thence South 83°55' West, along the centerline of said County Road, 238.15 feet to the Southeast corner of that certain Parcel of Land conveyed by W. V. Whisler and wife, to Hiram Whisler, by Deed recorded November 26, 1917 in Book 309, Page 236 of Deeds;
Thence North 15°59' East, along the Southeasterly line of said Parcel of Land conveyed to said Hiram Whisler, 625.48 feet to a point in the North line of said Lot 2;
Thence North 85° East, 588.30 feet to the Point of Beginning.

Parcel 16: 093-280-07 (Portion)

The West one acre of that Portion of Lot 2 in Block "A" of the Land of Oge and Bond, in the City of Orange, County of Orange, State of California, as per Map recorded in Book 3, Page 430 of Miscellaneous Records of Los Angeles County, California, described as follows:

Beginning at the Northeast corner of said Lot 2;
Thence South 17-1/2° East, 860 feet to the center of the County Road;
Thence, along the center of the County Road, the following courses and distances: South 81-1/4° West, 407 feet;
Thence North 9° West, 275 feet; south 84° West, 930 feet;
Thence, leaving the County Road, North 15-1/2° East, 625 feet to a post on the North line of said Tract;
Thence North 85° East, 930 feet to the Point of Beginning.

Except therefrom that Portion of said Land lying Westerly of a line described as follows:

Beginning at a stone marked "X" in the North line of said Lot 2, North 85° East, 1056.03 feet from the Northwest corner thereof;
Thence South 15°59' West, 625.48 feet to a pipe in the centerline of the County Road.

Parcel 17: 093-280-17

All that Portion of Section thirteen, Township four South, Range nine West, San Bernardino Base and Meridian, in the City of Orange, County of Orange, State of California, described as follows:

Commencing at the Northwest corner of the 82.84 acre Parcel of Land described in Deed to George H. Bandell, recorded April 13, 1920 in Book 358, Page 374 of Deeds, said Northwest corner being in the Southerly line of the Land belonging to the Jotham Bixby Company;
Thence North 85°29' East, along said Southerly line, being along the Northerly line of said 82.84 acre Parcel of Land 241.70 feet;  
Thence North 19°18' West, 405.66 feet;  
Thence North 50°15' East, 107.93 feet to the beginning of a curve concave to the Northwest, having a radius of 111.19 feet;  
Thence along said curve in a Northeasterly direction 59.38 feet;  
Thence North 19°18' West, 405.66 feet;  
Thence North 50°15' East, 107.93 feet to the beginning of a curve concave to the West, having a radius of 173.19 feet;  
Thence along said curve in a Northerly direction 104.94 feet;  
Thence North 14°29' West, 403.50 feet to the beginning of a curve concave to the East, having a radius of 276.29 feet;  
Thence along said curve in a Northerly direction 94.19 feet to the True Point of Beginning;  
Thence continuing along said curve in a Northerly direction 45.02 feet;  
Thence North 80°16' West, 45.00 feet;  
Thence South 80°16' East, 45.00 feet to the True Point of Beginning.

Parcel 18: 093-280-05

That certain water well site, in the City of Orange, County of Orange, State of California, described as Parcel 1 in that certain Deed to Santiago Mutual Water Company, recorded January 13, 1939 in Book 980, Page 58 of Official Records, in the office of the County recorder of said County, lying within a Portion of Section 23, Township 4 South, Range 9 West, San Bernardino Base and Meridian, being more particularly described as follows:

Beginning at the Northwesterly corner of Lot 2, Block "A", Land of Oge and Bond, as shown on a Map thereof recorded in Book 3, Page 430 and in Book 3, Page 431 both of Miscellaneous Records of Los Angeles County, California;  
Thence South 85°29' West, 406.70 feet to the True Point of Beginning;  
Thence South 85°29'30" West, 30.00 feet to a point;  
Thence North 4°31' West, 30.00 feet to a point;  
Thence North 85°29' East, 30.00 feet to a point;  
Thence South 4°31' East, 30.00 feet to the True Point of Beginning, as shown in Record of Survey Book 8, Page 3, Records of Orange County, California.

Parcel 19: 093-280-26 and 093-280-28

A Portion of those certain Parcels of Land in the City of Orange, County of Orange, State of California in Deeds recorded March 23, 1960 in Book 5160, Page 198 and February 13, 1979 in Book 13031, Page 1503 both of Official Records in the Office of the County recorder of said Orange County, being a strip of Land 55.00 feet in width, the Southerly line of said strip being more particularly described as follows:

Beginning at the Southwest corner of Lot "C" of Tract No. 13833 Filed in Book 690, Pages 21 through 24 inclusive of Miscellaneous Maps in the office of the County recorder of said Orange County, said point being on a non-tangent curve, concave to the North and having a radius of 1150.00 feet, from which corner a radial line bears North 2°26'22" East;  
Thence, Westerly along said curve, a distance of 71.08 feet through a central angle of 3°32'29" to the Point of Termination.

The Northerly line of said 55 foot wide strip of Land shall be prolonged Easterly along the curve so as to terminate in the Easterly line of said Book 5160, Page 198.

Assessor’s Parcel Number: 093-280-05, 07, 17, 26, 27, 28, 29, 30, 31; 370-041-12, 25; 379-011-08, 18, 21, 22
Exhibit “B”: Plan Alternatives (includes Alternatives A through G)
[Beneath this page]
PRE-DEVELOPMENT AGREEMENT

ALTERNATIVE B - OPA/MABURY RANCH/THE RESERVE ANALYSIS

September 26, 2016
Exhibit “C”: Development Fees
[Beneath this page]
## City of Orange Development Fees

The following fees, if applicable, will be collected by the Building Division at building permit issuance.

### Transportation System Improvement Program (TSIP) Effective 09/03/2008

See attached map for area identification

For further information please contact Doug Keys, Transportation Analyst at (714) 744-5540 or dkeys@cityoforange.org

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<thead>
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<th>Area “A”</th>
<th>Area “B”</th>
<th>Area “C”</th>
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### Foothill / Eastern Transportation Corridor Agency Fee (TCA) Effective 07/01/2016-06/30/17

Zone B – 55 to Weir Canyon Road

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Orange County - Sanitation District Fee Effective 07/01/16 - 05/30/2017

| TABLE A
<p>| CAPITAL FACILITIES CAPACITY CHARGES (CFCC) |</p>
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<td>Average Demand³</td>
<td>Per 1,000 square feet</td>
<td>$4,572.00¹</td>
</tr>
<tr>
<td>High Demand³</td>
<td>Per 1,000 square feet</td>
<td></td>
</tr>
<tr>
<td>Single Family Residential (SFR)⁵</td>
<td>Base Charge</td>
<td></td>
</tr>
<tr>
<td>5+ Bedrooms</td>
<td>$5,154.00</td>
<td></td>
</tr>
<tr>
<td>4 Bedrooms</td>
<td>$4,414.00</td>
<td></td>
</tr>
<tr>
<td>3 Bedrooms</td>
<td>$3,710.00</td>
<td></td>
</tr>
<tr>
<td>2 Bedrooms</td>
<td>$3,004.00</td>
<td></td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>$2,298.00</td>
<td></td>
</tr>
<tr>
<td>Multi-Family Residential (MFR)⁶</td>
<td>Base Charge</td>
<td></td>
</tr>
<tr>
<td>4+ Bedrooms</td>
<td>$4,008.00</td>
<td></td>
</tr>
<tr>
<td>3 Bedrooms</td>
<td>$3,301.00</td>
<td></td>
</tr>
<tr>
<td>2 Bedrooms</td>
<td>$2,594.00</td>
<td></td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>$1,854.00</td>
<td></td>
</tr>
<tr>
<td>Studio⁷</td>
<td>$1,191.00</td>
<td></td>
</tr>
</tbody>
</table>

Supplemental CFCC for Permit Users, includes 5% cost of funds.
Flow, gallons per day: $0.001863
BOD, pounds per day: $0.399520
SS, pounds per day: $0.214250

¹ Provided that the minimum Capital Facilities Capacity Charge for such new construction shall be $3,710; and all calculations shall be on a 1,000 square foot, or portion thereof, basis.

² Low Demand connections are the following categories of users: Nurseries; Warehouses; Churches; Truck Terminals; RV Parks, RV Storage Yards, Lumber/Construction Yards, Public Storage Buildings; and other facilities with restrooms, offices, lobbies and/or areas whose flows are similar in volume to these listed categories. Parking Structures not connected to the sewer will not be charged.

³ High Demand connections are the following categories of users: Restaurants, Supermarkets; Car Washes; Coin Laundries; Amusement Parks; Shopping Centers with one or more Restaurants, or Food Court; Food Processing Facilities; Textile Manufacturers; and other dischargers whose flow is similar in volume to these listed categories.

⁴ All other connections are Average Demand users including: Hotels, Strip Malls without restaurants, Music Halls without food facilities, Office buildings, Senior Housing with individual living units without kitchens but with a common kitchen.

⁵ Bedroom additions are considered a change of use and a CFCC must be paid. Bedrooms include loft additions, bonus rooms that may be used as offices, workout rooms, media rooms, or libraries, or any other additions, which could potentially be used as a bedroom. The classification of these additions will be reviewed and determined by staff. Any detached building such as an addition over an existing garage or a new building with the same designation as mentioned above will be considered a separate living residence (SFR).

⁶ MFR units consist of multiple units that receive one secured property tax bill such as apartments. Senior housing with individual living units that include a kitchen are considered MFR units.

⁷ Studio - one single room with no separating doors or openings leading to another part of the room (except for a bathroom).

*SFR - The rates for each size of SFR and MFR are established with a 3-bedroom SFR having a base of 1.0, and all others are a relative percentage higher or lower than 1.0, depending on size of unit, as noted.
### Park Dedication and In Lieu Fee (Quimby)

**Park Acquisition Fee 511**

*Residential Subdivision Developments Only*

(See Park Infill for New Residential Housing Units (Not a Part of a Subdivision))

<table>
<thead>
<tr>
<th>Density Classification (Dwelling Units/Gross Acre)</th>
<th>Density Classification (Dwelling Units/Gross Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 6 (DU/GA)</td>
<td>≤ 6 (DU/GA)</td>
</tr>
<tr>
<td>$7,994.00 per unit</td>
<td>$8,894.00 per unit</td>
</tr>
<tr>
<td>&gt; 6 - ≤ 15 (DU/GA)</td>
<td>&gt; 6 - ≤ 15 (DU/GA)</td>
</tr>
<tr>
<td>$9,434.00 per unit</td>
<td>$10,469.00 per unit</td>
</tr>
<tr>
<td>&gt;15 (DU/GA)</td>
<td>&gt;15 (DU/GA)</td>
</tr>
<tr>
<td>$9,506.00 per unit</td>
<td>$10,546.00 per unit</td>
</tr>
</tbody>
</table>

### Park and Recreational Facilities Development Impact Fee

**Park Infill Fee 510**

*Residential Projects Only*

Applies to Newly Created Housing Units (Not a Part of a New Subdivision)

(See Park Acquisition (Quimby) for Subdivision Developments)

<table>
<thead>
<tr>
<th>Density Classification (Dwelling Units/Gross Acre)</th>
<th>Density Classification (Dwelling Units/Gross Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 6 (DU/GA)</td>
<td>≤ 6 (DU/GA)</td>
</tr>
<tr>
<td>$7,994.00 per unit</td>
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</tr>
<tr>
<td>&gt; 6 - ≤ 15 (DU/GA)</td>
<td>&gt; 6 - ≤ 15 (DU/GA)</td>
</tr>
<tr>
<td>$9,434.00 per unit</td>
<td>$10,469.00 per unit</td>
</tr>
<tr>
<td>&gt;15 (DU/GA)</td>
<td>&gt;15 (DU/GA)</td>
</tr>
<tr>
<td>$9,506.00 per unit</td>
<td>$10,546.00 per unit</td>
</tr>
</tbody>
</table>

### Library Facilities Development Impact Fee

*Residential Projects Only*

Applies to All Newly Created Housing Units

<table>
<thead>
<tr>
<th>Density Classification (Dwelling Units/Gross Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citywide</td>
</tr>
<tr>
<td>Less than 6 (DU/GA)</td>
</tr>
<tr>
<td>From 6 to 15 (DU/GA)</td>
</tr>
<tr>
<td>More than 15 (DU/GA)</td>
</tr>
</tbody>
</table>
### Fire Protection Facility Fee

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detached Residential</td>
<td>$1200.00 per unit</td>
</tr>
<tr>
<td>Attached Residential</td>
<td>$601.00 per unit</td>
</tr>
<tr>
<td>College/University Dorm</td>
<td>$971.00 per unit</td>
</tr>
<tr>
<td>Group/Congregate Units</td>
<td>$2,306.00 per unit</td>
</tr>
<tr>
<td>Commercial Lodging</td>
<td>$955.00 per unit</td>
</tr>
<tr>
<td>Commercial/Office Use</td>
<td>$.595 per sq. ft.</td>
</tr>
<tr>
<td>Industrial Manufacturing Use</td>
<td>$.570 per sq. ft.</td>
</tr>
<tr>
<td>Private Hospital Use</td>
<td>$2.562 per sq. ft.</td>
</tr>
</tbody>
</table>

### Police Facility Fee

<table>
<thead>
<tr>
<th></th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Dwelling</td>
<td>$354.89 per unit</td>
</tr>
<tr>
<td>Non-Residential</td>
<td>$0.206 per Sq. Ft.</td>
</tr>
</tbody>
</table>

### School Development Fee

(Collected by the Orange Unified School District)

1401 N. Handy Street, Orange, CA 92867

For additional information, call (714) 628-5369
**Building Permit and Plan Check Fee**

A fee for each building permit and plan check fee shall be determined based on the following fee schedule, which is based on the building valuation.

The building valuation shall be determined by the Building Official and is the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment.

<table>
<thead>
<tr>
<th>Building Valuation</th>
<th>Basic Fee</th>
<th>Add</th>
<th>$100</th>
<th>Per</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.00 to $500.00</td>
<td>$22.82</td>
<td>$0.00</td>
<td>$100</td>
<td>$500.00</td>
</tr>
<tr>
<td>$501.00 to $2,000.00</td>
<td>$22.82</td>
<td>$3.05</td>
<td>$1,000</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>$2,001.00 to $25,000.00</td>
<td>$68.52</td>
<td>$13.69</td>
<td>$1,000</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>$25,001.00 to $50,000.00</td>
<td>$383.38</td>
<td>$9.88</td>
<td>$1,000</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>$50,001.00 to $100,000.00</td>
<td>$630.26</td>
<td>$6.84</td>
<td>$1,000</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>$100,001.00 to $500,000.00</td>
<td>$972.02</td>
<td>$5.32</td>
<td>$1,000</td>
<td>$500,000.00</td>
</tr>
<tr>
<td>$500,001.00 to $1,000,000,000.00</td>
<td>$3,099.38</td>
<td>$4.56</td>
<td>$1,000</td>
<td>$1,000,000,000.00</td>
</tr>
<tr>
<td>$1,000,001.00 to $2,000,000,000.00</td>
<td>$5,380.98</td>
<td>$3.05</td>
<td>$1,000</td>
<td>$2,000,000,000.00</td>
</tr>
</tbody>
</table>

Mechanical, Electrical, and Plumbing fees are calculated separately and are generally based on unit costs (see permit applications for these unit costs).

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1 The plan check fee shall be 65% of the building permit fee and will be collected at the time of permit application.

2 or fraction thereof
Exhibit "D": Memorandum Dated June 12, 2015
[Beneath this page]
MEMORANDUM

TO: Rick Otto
City Manager, City of Orange

CC: Mabury Ranch Homeowner's Association, The Reserve Homeowner's Association, Theresa Sears, Tom Davidson, Franklyn R. Elfend, Carmen A. Marinello

FROM: Christopher Nichelson, Milan Capital Management

SUBJECT: Rio Santiago Sand and Gravel Operations

DATE: June 12, 2015

Over the past several months, our representatives, Franklyn R. Elfend and Carmen Marinello, have met with members of the community representing the Orange Park Acres Homeowners Association (OPA), the Mabury Ranch Homeowners Association (Mabury HOA) and the Reserve Homeowners Association (Reserve HOA) (collectively herein referred to as “Community Members”). The primary purpose and focus of these meetings has been to address the current ongoing sand and gravel operations on the Rio Santiago property. More specifically, Mr. Elfend and Mr. Marinello have met with the Community Members to address questions they have concerning noise, dust, and aesthetics along Santiago Canyon Road resulting from the current operations.

In addition to addressing the current sand and gravel operations with the Community Members, we have also had general discussions regarding the long-term land use of the property. As a result of these meetings, as well as meetings with you and the Orange City Attorney's office, we have been encouraged by the constructive dialogue that has taken place. Consequently, as a good faith gesture to encourage further constructive dialogue regarding the long-term land uses for the Rio Santiago property, we have agreed to curtail and modify the current sand and gravel operations on an interim basis as follows:

1. Material imports for backfill and stockpiling will be suspended indefinitely as of September 7, 2015. This will significantly reduce and possibly eliminate a majority of the questions we have received regarding truck traffic along Santiago Canyon Road, vehicle back up noise and dust impacts in connection with the current stockpiling operation.

2. After July 31st, the current rock crushing operations will be limited to a total of 15 consecutive business days in any six month period. During this 15 day period there may be some import of materials, but most likely fewer than two dozen truck trips per day, and probably not for the entire 15 day period. It is our intention to give the surrounding community a minimum of two weeks notice prior to starting these operations up again. Additionally, we will work with the Community Members and the City staff to
temporarily relocate the rock crushing operation to a site on the property that will be the furthest feasible location from adjacent residences.

3. Watering of the site or other dust mitigation methods will be continued notwithstanding the interim curtailing of operations in order to continue to minimize dust impacts to the surrounding residents.

4. We will work with the City and others to evaluate the feasibility of applying a suitable spray-on polymer covering or facsimile on the existing stockpiles with the objective of reducing the need for water usage and to provide more effective dust control.

5. We have enhanced, and are continuing to enhance the maintenance of the property frontage along Santiago Canyon Road. This includes a comprehensive ongoing plan to remove weeds and debris as well as repairing and maintaining the existing fence screens to improve the overall aesthetics of the property frontage.

6. We are exploring options to place/install temporary landscaping enhancements along Santiago Road to provide a more pleasing interface along Santiago Canyon Road.

The foregoing temporary changes and enhancements to our current operations are premised upon the establishment and continuation of our good faith collaborative effort to address the long term land uses for the Rio Santiago project with full participation by the Community Members and the City of Orange together with our representatives, Franklyn Elfend and Carmen Morinello. As Mr. Elfend and Mr. Morinello have discussed with you, the City Attorney’s office, and the Community Members, it is our intent to negotiate and submit for approval a Pre-Development Agreement similar to the agreement which the City previously negotiated and approved for the Del Rio Project in the City of Orange. As the City is aware, there are many similarities between the Del Rio Project planning process and the process we contemplate for the Rio Santiago project. Initiating this process with a similar Pre-Development Agreement effort is, we believe, a constructive, useful and positive land use planning tool which will help guide our subsequent comprehensive land planning process for the Rio Santiago Project which will include an EIR, Specific Plan and subsequent Development Agreement.

We are very encouraged by the progress made by Mr. Elfend and Mr. Morinello in their conversations with you, the City’s planning department and City Attorney’s office. Equally important, we are very encouraged with our initial conversations with the Community Members and their desire to address the Rio Santiago Project in a more collaborative, constructive and transparent manner in order to achieve the visions and goals of all parties involved. In our discussions with the Community Members, there is consensus that a more transparent and inclusive process for all concerned parties will help us achieve these goals.

We look forward to commencing the process discussed above and working with the Community Members and City staff towards a positive conclusion for the city, for our neighbors, and for us. Thank you in advance for your help in this effort.
Exhibit “E”: Interim Remediation Plan
[Beneath this page]
PRE-DEVELOPMENT AGREEMENT

PRELIMINARY INTERIM STOCKPILE REDUCTION PLAN

August 31, 2016
Information Source: Fuscoe Engineers H1a-1 RS Backfill Operations, Phase 1 Stockpile “A” Removal Plan 08.18.16.

PRE-DEVELOPMENT AGREEMENT

SECTION A: BEFORE & AFTER
PRELIMINARY INTERIM STOCKPILE REDUCTION PLAN

August 31, 2016
Information Source: Fuscoe Engineers H1a-1 RS Backfill Operations, Phase 1 Stockpile "A" Removal Plan 08.18.16.